109-110

TRANSCRIPT OF RECORD. 110-180

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 64.

THE GOOD INTENT TOW-BOAT COMPANY, W. [illegible]LAN, SUBROGATED TO THE RIGHTS OF THE OCEAN TOW-BOAT COMPANY, STEPHEN FLANAGAN, JAMES M. FLANAGAN, AND EDWARD A. YORKE, APPELLANTS,

vs.

THE ATLANTIC MUTUAL INSURANCE COMPANY OF NEW YORK, THE BRITISH AND FOREIGN MARINE INSURANCE COMPANY OF LIVERPOOL, THE STANDARD MARINE INSURANCE COMPANY OF LIVERAOOL, THE FACTORS AND TRADERS' INSURANCE COMPANY OF NEW ORLEANS, THE NEW ORLEANS INSURANCE ASSOCIATION, THE INSURANCE COMPANY OF NORTH AMERICA, THE PHŒNIX INSURANCE COMPANY OF BROOKLYN, AND RHENISH-WESTPHALIAN LLOYD'S MARINE INSURANCE COMPANY.

FILED OCTOBER 7, 1880.

No. 987.

THE ATLANTIC MUTUAL INSURANCE COMPANY OF NEW YORK, THE BRITISH AND FOREIGN MARINE INSURANCE COMPANY OF LIVERPOOL, THE STANDARD MARINE INSURANCE COMPANY OF LIVERPOOL, THE FACTORS AND TRADERS' INSURANCE COMPANY OF NEW ORLEANS, THE NEW ORLEANS INSURANCE ASSOCIATION, THE INSURANCE COMPANY OF NORTH AMERICA, THE PHŒNIX INSURANCE COMPANY OF BROOKLYN, AND RHENISH-WESTPHALIAN LLOYD'S MARINE INSURANCE COMPANY, APPELLANTS,

vs.

THE GOOD INTENT TOW-BOAT COMPANY, W. H. McLELLAN, SUBROGATED TO THE RIGHTS OF THE OCEAN TOW-BOAT COMPANY, STEPHEN FLANAGAN, JAMES M. FLANAGAN, AND EDWARD A. YORKE.

FILED SEPTEMBER 27, 1883.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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FILED SEPTEMBER 27, 1883.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

THE NEW HARBOR PROTECTION COMPANY
vs.
THE SHIP TORNADO, CARGO, ETC., ETC., OCEAN Tow-Boat Company, and others, intervening libellants. } No. 8770.

Joseph P. Hornor & Wm. S. Benedict, for intervening libellants, appellants; J. McConnell, for claimants of cargo, appellants.

TRANSCRIPT OF RECORD OF APPEAL.

Returnable to the Supreme Court of the U. S., at Washington, D. C., on the second Monday of October, A. D. 1880.

1 UNITED STATES OF AMERICA:

Circuit court of the United States in and for the fifth circuit and district of Louisiana.

THE NEW HARBOR PROTECTION COMPANY
versus
SHIP TORNADO, CARGO, ETC., ETC. } No. 8770.

Extracts from transcript of appeal from the district court of the United States for the district of Louisiana.—Filed October 14th, 1879.

United States district court for the district of Louisiana. In admiralty

THE NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, CARGO, ETC.

Libel.—Filed February 27th, 1878.

To the honorable the judge of the district court of the United States for the district of Louisiana, holding sessions at the city of New Orleans:

2 The New Harbor Protection Company, a corporation duly chartered under the laws of Louisiana and domiciled in the city of New Orleans, owners of the steam fire-boat Protector, of which Theodore F. Colburn is captain, exhibit this their libel against the ship Tornado, now lying at the port of New Orleans, whereof Ellis is now or lately was master, and her freight, her boats, tackle, apparel, and furniture, and against her cargo, consisting of fifty-one hundred bales of cotton, or such parts thereof as may be found within this district unsold, and the proceeds of such parts thereof as may have been sold, and against all persons lawfully intervening for their interest respectively, whether in said ship or her freight or cargo, or the proceeds thereof, in a cause of salvage, civil and maritime.

And thereupon the said New Harbor Protection Company allege and articulately propound as follows:

1st. That on Sunday, the 24th day of February, 1878, at about
3 six o'clock a. m., the aforesaid iron tow-boat Protector, of 158.43 tons burthen, whereof the aforesaid New Harbor Protection Company was then and is now owner, and the aforesaid Theodore F. Colburn was then and is now master, and having a crew men beside the said master, was lying in the port of New Orleans, and is provided with great and powerful pumps, engines, hose, and other apparatus for the purpose of pumping water as well as steam to extinguish fires on ships and other kind of vessels.

To the already well-equipped and powerful steam iron fire-boat Protector have been added a new appliance for forcing dry carbonic-acid gas into a vessel's hold, which instantaneously subdues, and, after remaining a sufficient length of time in the hold of the vessel, completely extinguishes every vestige of fire in the vessel's hold. The gas also exerts a beneficial influence on cotton, by reason of its bleaching qualities, and also preserves the timber of a vessel. In addition to the above are attached two
4 tanks which throw a strong liquid solution of sulphuric acid, soda, and water, to extinguish fires on decks and in open places; and also other apparatus and appliances specially for the object of salving vessels in and about the port of New Orleans; and was well equipped, manned, and maintained by libellant, at extraordinary costs and expenses, for the purpose of expeditiously and effectively rendering salvage services, the libellant having expended large sums of money to provide a proper boat, with extraordinary facilities and a number of large and powerful pumps, of a maximum capacity of throwing six thousand six hundred gallons of water per minute, viz, maximum of large marine pump, 5,000 gallons per minute; forward fire-pump, 1,000 gallons per minute; after fire-pump, 600 gallons per minute; total, 6,600 gallons per minute; and with the aforesaid dry carbonic-acid gas apparatus and tanks for throwing a liquid solution, to extinguish fires on deck and in open places, and steam always kept up, and fire-alarm telegraphic wires (to indicate the exact locality of fires) carried to the
5 levee at the port of New Orleans where said steam iron fire-boat always lies when unemployed, and having a home or shelter provided for day and night watchmen to communicate instantly any fire-alarm, the said iron fire boat being by this system and expenditure then and always ready at a moment's warning to start and go to work which makes it the most efficient and complete fire-boat of the kind in the United States, possessing immense advantages to extinguish fires in or on vessels, by dry carbonic-acid gas, by liquid solution, by steam or water, which no other vessel can equal, and is the only steam iron fire-boat of its kind in this harbor; and that the station of the boat is fitted with a private fire-telegraph, connected with every pier along the river front, a distance of about 3 or 4 miles, which enables the Protector thus to ascertain the locality of a fire some time in advance of any other vessel in the harbor, or even in advance of the city fire department, by means whereof the Protec-
6 tor starts on her way to a fire before any others equidistant therefrom.

2nd. That on the 24th February, 1878, at about 6 o'clock a. m., 3 minutes in advance of the regular city fire-alarm, the Protector was notified of the existence of a fire through the agency of their private telegraph, and immediately proceeded on her way and arrived at the foot of Marigny street, in the third municipal district of the city of New Orleans, where she found the ship Tornado, of which Ellis is or was master, of about 1,720 tons burthen, on fire; and the said Protector instantly went to work by first putting into said ship's main hatch streams of water, until the master of the Tornado consented to the use of carbonic-acid gas to extinguish the fire in his vessel; that the hatches were thereupon closed and covered with tarpaulin in order to make them (the hatches) perfectly tight, and immediately running continuous streams of carbonic-acid gas into the hold of the said ship Tornado; that the fire-engines, which up
7 to that time had been at work throwing water into said ship, were discontinued; that at or about 12 o'clock of the same day, no smoke being visible or any indications of fire outside of the vessel, the said master, Ellis, in spite of the protest of Captain Colburn, the master of the said Protector, and of the protest of A. Kalinski, captain of the salvage corps of the Board of Underwriters of New Orleans, insisted upon having the hatches of his ship opened in order to break out the cargo, even after being advised not to do so by the chief engineer of the fire department, who stated to him emphatically that he, the said Ellis, should leave his hatches closed an hour or two longer, with the gas in the hold, and that thereby the said ship Tornado would be saved; but the said Ellis, disregarding this advice, which he himself had sought, ordered the hatches to be opened and the deck cut away, in order to remove the cotton which was nearest to these openings; that the ship's hold being full of carbonic acid gas, a diver with submarine armor was sent down
8 to hook on to such cotton as was there, and which cotton was then hoisted on deck; that this proceeding continued for about one hour, when, through the persistence of said Ellis in not permitting the carbonic-acid gas to perform its work thoroughly, the fire, which had been slumbering and smouldering, broke out afresh, caused by coming in contact with the air which had once more entered into the hold of the said ship through the opened hatches; that the said Ellis thereupon ordered the chief engineer of the fire department to extinguish the said fire with water from his engines, and thereupon the said chief engineer gave the alarm of fire, and the engines on shore immediately went to work throwing water into the hold, and were assisted in this by the Protector, which forced three streams of water through the opening in the deck, the said Ellis having driven off all the tugs, leaving only the Protector and the fire department; that the pouring of water into the hold of said
9 ship continued until evening without any intermission or apparent good result; that at that time the said Ellis again instructed the said Captain Colburn, of the Protector, to inject gas into his ship; that the hatches and all other openings on said ship communicating with her hold were reclosed, and two continuous streams of gas were forced in, completely filling the hold with the fumes of said gas; that just before the hatches were closed the smoke was pouring out in dense volumes through the main hatch and all the openings in its immediate vicinity, giving unmistakeable proofs that a strong fire was raging in

the hold of the Tornado; that in about 1 or 2 hours after closing the hatch and injecting the gas no more smoke was visible, making it evident that the fire was rapidly being diminished; that this also was made more perceptible from the fact that augur-holes which had been bored in the deck, and which during the time that water was being thrown into the said ship emitted great heat and smoke, were now comparatively cool and
10 emitted no heat; that the Protector continued the process of injecting gas into the said hold during the remainder of the night of Sunday, 24th February, 1878, until Monday morning, the 25th of February, when once more, in spite of the earnest protest of Captains Colburn and Kalinski, the said Ellis ordered his stevedore to open the hatches and take out the cargo; that said Captain Colburn then a second time sent his divers down in submarine armor to hook on to such cotton as was practicable to hook on to; that the said diver continued said work until the smouldering fire, being fed by fresh air coming in through the hatches and openings, drove him away; that the Protector and the fire-engines in the mean time poured streams of water into the hold through the open hatch, the fire steadily gaining and increasing in intensity; that in the early part of the evening of Monday, the 25th of February, he, the said Ellis, again consented that the Protector should extinguish that fire with gas exclusively; that upon this the said master of the Protector immediately purchased a large supply of chemicals in
11 order to perform this work completely and thoroughly, but about 6 o'clock p. m. of the same day he, the said Ellis, once more changed his mind, and notified the said master of the Protector that he, the said Ellis, would not allow the gas to remain in the ship any longer than until the next morning, say about twelve hours; that thereupon the said Captain Colburn, knowing the futility of keeping the gas in the ship for so short a time, refused so to do, but expressed a firm belief that he could extinguish the fire in seventy-two hours if permitted to accomplish its extinction without interference by him, the said Captain Ellis, in opening the hatches; that his offer being refused by the said Ellis, he, the said Colburn, tendered his services with water, the Protector being able to throw as much, and even more, water than the combined fire-engines there at work, and this was also declined by the said Captain Ellis; that by the services of the Protector, at about half past twelve o'clock on said Sunday morning, after the Protector had, with the consent of the said Ellis,
12 and after full consultation between him and the said Colburn, been in sole possession for over five hours of the said ship Tornado and her cargo, they, with the exception of a few bales of cotton damaged by fire, were at that time, to all external appearances, under absolute control, and would have been totally saved without any further damage but for the unjustifiable conduct of the said Captain Ellis as hereinabove in part detailed.

3d. That the value of the said cargo is about the sum of dollars, and the value of said , her freight, her boats, tackle, apparel, and furniture, when so saved was about the sum of dollars.

4th. That by law and according to the usages and customs of the admiralty libellants are entitled to compensation at such rates as shall be fixed and determined by this hon'ble court in view of the great im-

13 portance and nature of the services rendered by the said fire-boat Protector and her said master and crew in saving said .

5th. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this hon'ble court.

Wherefore, the premises considered, libellants pray that process in due form of law and according to the course of courts of admiralty do issue against the said , and that all persons having or pretending to have any right, title, or interest in the said be cited and admonished to appear and answer to the matter herein propounded and alleged, and this hon'ble court will pronounce for the demand of libellant and will decree to them such compensation and reward by reason of the premises as shall appear to be just and reasonable, and decree that the same be paid, with costs and legal interest from the said 24th day of February, 1878, until final payment, by privilege and preference out of the proceeds of sale of the ; and that it may please your honor to grant
14 unto libellants such other further and general relief and redress as to right and justice may appertain and as the court is competent to give in the premises.

(Signed) M. M. COHEN,
Proctor for Libellants.

Thomas A. Adams, being duly sworn, deposeth that he is president of the New Harbor Protection Company, and that to the best of his knowledge and belief the allegations of the foregoing libel are true.

(Signed) THOS. A. ADAMS.

Sworn to and subscribed before the undersigned, a commissioner of the circuit court, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans, this 27th February, 1878.

(Signed) ANDREW HERO,
Commissioner of Circuit Court.

Order.

15 Let admiralty process issue as prayed for.

(Signed) R. DEVONSHIRE, *D'y Cl'k.*

February 27th, 1878.

United States district court, district of Louisiana.

THE NEW HARBOR PROTECTION COMPANY *versus* THE SHIP TORNADO & CARGO, &C. } No. 11207.

Supplemental and amended libel of New Harbor Protection Company.—Filed March 25th, 1878.

To honorable the judge of the said court:

The supplemental and amendatory libel of the Harbor Protection Company humbly showeth that at the date of the filing of their original libel in this case they were uninformed as to the value of the said ship and cargo

and freight at the time when by these libellants they were saved from total loss by fire, and also of the exact amount of money which these libellants had expended in rendering said salvage services; but that they have
16 now ascertained the precise sum of their expenditures incurred in saving said ship and cargo and freight, and the approximate value of said ship and cargo and freight after being so saved by these libellants.

Wherefore they pray leave to amend their original libel by now articulately alleging and propounding as follows:

First. That the amount expended by these libellants in and about saving the said ship and cargo and freight as aforesaid, exclusive of the wages of their fire-boat, for acids, soda, extra labour, &c., is $2,223.26.

Second. That the value of said ship Tornado when so saved by the libellants was seven thousand dollars, as appears by the appraisement of said ship by Wm. C. Black, the appraiser appointed by this honorable court, filed this 25th March, 1878.

Third. That the value of said cargo when so saved by these libellants is believed to be the sum of one hundred and sixteen $\frac{325}{0}$ thousand dollars, as appears by the marshal's sale thereof, as per report of master filed
17 25th March, 1878, up to this date, to which valuation is added the value of five hundred bales of cotton, appraised for bonding, $18,000, by said reports of said master filed 25th March, 1878, and about 40 bales of cotton, more or less, remaining, to be sold by the marshal, which 40 bales these libellants estimate at about the sum of fifteen hundred and twenty dollars, more or less, making the approximate value in all of the cargo so saved by these libellants to be about the sum of one hundred and thirty-five thousand five hundred and fifty-two $\frac{50}{100}$ dollars ($135,552.50), more or less.

Fourth. That the value of the freight so saved by these libellants at present unknown.

(Signed) M. M. COHEN,
Proctor for Libell't.

(Signed) THOS. A. ADAMS,
President New Harbor Protection Company.

Sworn to and subscribed before me this 25th day of March, 1878, to the best of his knowledge and belief.

[SEAL.] (Signed) THEO. GYOL, *N. P.*

18 Let this suppl. and amended libel be filed.
March 28th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

No. 11207.

United States district court, district of Louisiana.

To the hon'ble the judge of the said court:

The supplemental and amendatory libel of the New Harbor Protection Company vs. The Ship Tornado and her cargo, &c., humbly showeth that in their original libel, in article 4, page 10, after the last two words, viz, "saving said," they omitted to add the words "ship and cargo, &c.," and in article 5th, on page 11 of their said original libel, they omitted the same words, "ship, &c," & "cargo, &c."

Wherefore libellants pray leave to file their amendatory libel, adding the above words, "ship, &c.," and "cargo, &c.," to the original libel,
19 and that the said words be deemed and taken as part of said original libel.

M. M. COHEN,
Proctor for Libellants.

Let this amended libel be filed.
March 1st, 1878.
(Signed) EDWARD C. BILLINGS, *Judge.*

U. S. district court, district of Louisiana.

THE NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, CARGO, ETC.

Amendatory libel of the New Harbor Protection Co.—Filed January 13th, 1879.

The supplemental and amendatory libel of the New Harbor Protection Company was filed by leave of court, humbly showeth that after the date of the services rendered by libellants on fire-boat Protector, as set forth in their original libel in this case, filed on the 27th day of February, 1878, about 1 o'clock p. m., the said Protection rendered other and fur-
20 ther services in saving said ship Tornado and cargo, by pumping out said ship and otherwise, which services these libellants articulately allege and propound as follows:

1st. That on Wednesday, 27th February, 1878, at about 5 o'clock p. m., the Protector began pumping out the Tornado, and continued said pumping during that night and until about 12 o'clock on Thursday morning, 28th February, 1878.

2d. That after said time the Protector remained alongside of the Tornado until Saturday night, the 2d March, 1878, with her suctions ready in the event that the Tornado should spring a leak.

3rd. That the Protector was about 17 hours engaged in pumping out the Tornado, and during that time pumped out 3 million 9 thousand gallons of water.

4th. That the pumps of the Protector and other boats kept a suction on the canvass which had been placed around the Tornado for the purpose of stopping the holes and leaks on said ship, and that this
21 suction was useful and requisite in order to keep said canvas closed and enable parties searching there to find all the leaks.

5th. That this pumping took off the sediment, which taking off was an advantage, as it took the weight off, and by keeping the sediment in agitation this pumping prevented said sediment from settling on the bottom.

6th. That said ship's being flooded with water and loaded with cotton, prompt action was necessary for saving said ship and cargo, and if the Tornado had not been rapidly pumped out she might have turned over or slided out into the river and been lost, with all her cargo, and that it would have taken the three engines then there, viz, the Engine No. 4, Vigilant,

3, and No. 9, about ten days to pump the water out of the Tornado, which was in fact done in 17 hours.

(Signed) M. M. COHEN,
Proctor for the New Harbor P. Co.

Let this amended libel be filed, jurat being waived by counsel for underwriters claimants.

January 13th 1879.

(Sigued) EDWARD C. BILLINGS, *Judge.*

22 *Petition of intervention and answer of Marshall J. Smith & Co., agents, &c.—Filed March 5th, 1878.*

District court of the United States for the district of Louisiana.

NEW HARBOR PROTECTION CO. *vs.* SHIP TORNADO, FREIGHT, CARGO, &C. } No. 11207. In admiralty.

To the honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

The petition of intervention and answer of Marshall J. Smith and Company, a firm composed of Marshal J. Smith and Emile P. Roux, of the city of New Orleans, intervening for the interest of their principals to the libel of the New Harbor Protection Company, alleges as follows:

1st. That by a commission dated the tenth day of October, one thousand eight hundred and seventy-seven, and signed by H. M. Hozier, secretary of the committee for managing the affairs of the under-
23 writers at Lloyd's in London, in that part of the United Kingdom of Great Britain and Ireland called England, these intervenors were appointed to act as agents for the subscribers at Lloyd's at the port of New Orleans, within the district aforesaid, subject to the instructions in said commission mentioned; and that by the said instructions they are, amongst other things, directed, when salvage or remuneration is claimed for assistance rendered to vessels, to attend the meetings of commissioners, magistrates, or other persons legally authorized to determine the amount, in order to rebut any exaggerated statements on the part of the salvers by evidence of the master and crew; and they are likewise authorized and empowered by the same commission to attend to the interest of the subscribers at Lloyd's in general, as by the said commission now in the possession of these said respondents will more fully and at large appear, and to which, for greater certainty, these intervenors pray leave to refer.

2d. That these intervenors have been informed that the said ship Tornado and her freight were issued at said Lloyd's, by some or all of
24 the underwriters therein, and that they have been instructed by cable telegrams of date the second and fourth of March, 1878, respectively, to protect the interests of said underwriters, as from said telegrams, now in the possession of these underwriters, more fully and at large will appear, and to which, for greater certainty, they pray leave to refer.

3d. That these intervenors do not yet know what is the exact interest of their principals in and to the said ship Tornado and her freight, nor what the

same may prove to be, nor can they speak on this point with certainty, and therefore expressly abstain from making any claim thereto; but they annex hereto the freight-list of said ship Tornado, showing that the amount of freight, inclusive of charges and primage, to be £4,377 18 7 sterling, as stated by Shultz & Co., ship brokers and agents of said ship Tornado.

And now, answering said libel, these intervenors and respondents allege:

25 1st. That as to the facts set forth in articles 1st, 2d, 3d, 4th, and 5th of said libel these intervenors and respondents have not personal knowledge and are ignorant, and therefore can neither admit nor deny the same, but leave the same to be proved by the said libellants.

2d. That all and singular the matters herein stated are true.

Wherefore intervenors pray, on behalf of their said principals, that they may have leave to file this petition of intervention and answer; that they be allowed to intervene for the interests of their said principals, and that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn libellant in costs, and otherwise law and justice to administer in the premises.

(Signed) HUDSON & FEARN, *Proctors.*

Emile P. Roux, being duly sworn, says that he is a member of the firm of Marshall J. Smith & Company; that he has read the foregoing petition of intervention and answer, and that the same is true of his own

26 knowledge, except as to matters therein stated to be upon informa- and belief, and as to those matters he believes it to be true.

(Signed) EMILE P. ROUX.

Sworn to and subscribed to before me this 5th March, 1878.

(Signed) K. LOEW,
Comm'r Circuit Court.

Let this intervention be filed.
March 5th, 1878.

(Signed) EDWARD C. BILLINGS,
Judge.

NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, CARGO, & FREIGHT.

Intervening claim of the underwriters.—Filed March 19th, 1878.

To the honorable E. C. Billings, judge of the district court of the United States for the district of Louisiana:

27 1st. The Atlantic Mutual Insurance Company of New York, a corporation created under the laws of the State of New York, and domiciliated in the city of New York, and of which James A. Whitlock is special agent, now in the city of New Orleans;

2d. The British and Foreign Marine Insurance Company of Liverpool, a corporation created under the laws of Great Britain, and domiciliated in Liverpool, England, and of which Pim, Forward & Co. are the agents in New Orleans;

3rd. The Standard Marine Insurance Company of Liverpool, England, a corporation created under the laws of Great Britain, and domiciliated in Liverpool, and of which George Mathu is agent in New Orleans;

4th. The Factors and Traders' Insurance Company of New Orleans, a corporation created under the laws of Louisiana, and domiciliated in New Orleans, and of which Edward Talfrey is president;

5th. The New Orleans Insurance , a corporation created under the laws of the State of Louisiana, and domiciliated in New Orleans, and of which Wm. A. Bell is acting president;

28 6th. The Insurance Company of North America, a corporation created under the laws of Pennsylvania, and domiciliated in Philadelphia, and of which Marshall J. Smith & Co. are agents in New Orleans;

7th. The Phœnix Insurance Company of Brooklyn, a corporation created under the laws of the State of New York, and domiciliated in Brooklyn, and of which Marshall J. Smith & Co. are agents in New Orleans;

8th. The Rhenish Westphalian Lloyd's Marine Insurance Company, M. Gladbach, a corporation created under the laws of Germany, and domiciliated in Munchen Gladbach, Germany, of which S. A. Moritz is agent in the city of New Orleans—

Severally intervening in the above-entitled and numbered cause for their interest in the cargo of the said ship Tornado or proceeds thereof, appear before this honorable court and claim the said cargo unsold and proceeds of said cargo sold, or that may be sold, and state—

29 First. That the said ship Tornado, cargo, and freight have been libelled and seized under admiralty process herein at the suit of said libellant and numerous other intervening libellants for salvage, and by an order herein rendered on the 6th day of March, 1878, the captain, as lawful bailee, was authorized to bond the vessel and such portion of the cargo as was then stored in the levee steam cotton-press, and the remainder of the cargo on board ship or on the levee was ordered to be sold, and to which order reference is made as part hereof.

Second. That the entire cargo of said ship, except a few staves, consisted of cotton, numbering in all 5,195 bales, of which 164 bales were on the levee at the time of the fire, and had not been on board the ship, and were not damaged, and 336 bales were rescued from the ship on the first, second, and third days of the fire, and before there was much damage to the cargo, and before the said ship sunk.

Third. That your claimants were and are the underwriters of the whole of said 5,195 bales of cotton, constituting the whole cargo except

30 a few staves, as aforesaid, of said ship, as follows:

No. 1.	The Atlantic Mut'l Ins. Co. of N. Y.....	2,167	b. c.
No. 2.	" British & Foreign Marine Ins. Co. of Liverpool..	939	"
	Do. do. do. do. do. ..	111	"
No. 3.	Standard Marine Ins. Co. do. ..	556	"
No. 4.	Factors & Traders' Ins. Co. of N. O	571	"
No. 5.	New Orleans Ins. Association, of N. O.....	484	"
No. 6.	Ins. Co. of North America, of Philad.....	200	"

No. 7. Phœnix Ins. Co. of Brooklyn.....	81	"
No. 8. Rhenish-Westphalian Lloyd's Marine Ins. Co.....	86	"
Total.....	5,195	"

That the marks of said cotton and other necessary details will appear from the schedules and exhibits herewith filed as part hereof, and to which reference is made for brevity in pleading.

Fourth. That the said ship Tornado is so badly burned and strained as to be unfit for repairs, the costs of which would exceed the value of the ship when repaired, which facts, with other details showing the utter destruction of said ship, will appear from the annexed official survey made part hereof.

Fifth. That the damage to said cargo and ship by fire and water, as referred to in said libel, were so great as to cause a constructive total
31 loss of said cargo and ship, and absolutely terminate the voyage, and is so considered and treated by all your said claimants, the said cargo, as their said agents in this city are advised, having been abandoned to them, and the abandonment accepted, and payments made or being made by all said claimants as in case of total loss, the following-named claimants having already paid total loss on the portions of cargo insured by them as aforesaid, to wit:

No. 1. Atlantic Mut'l Ins. Co. of N. Y.,	on...	2,167	b. c.
No. 2. British & Foreign Marine Ins. Co. of Liverpool,	" ...	1,050	"
No. 4. Factors & Traders Ins. Co. of N. O.,	" ...	571	"
No. 5. N. O. Ins. Association of N. O.,	" ...	484	"
		4,272	

Sixth. That some of your claimants have already had returned to them the bills of lading for portions of said cotton, which they file herewith as part hereof, and respectfully pray leave of the court for time to file the remainder of said bills of lading for the remainder of said cargo, should the same be deemed necessary, as soon as received.

Seventh. That by reason of the premises your said claimants
32 have become and are the bona fide, absolute, and sole owners of the said entire cargo of cotton so insured by them respectively as aforesaid, and of the proceeds of such part thereof as has been or may be sold.

Seventh. That owing to the damage of said cargo and the destruction of the marks thereon, the various lots insured are undistinguishable with but few exceptions (except the cotton which the captain, as bailee, has been authorized to bond), and therefore your claimants have and so appear as having a common interest as claimants of said cargo and its proceeds, and a like common interest in defending against the said libellant and intervening libellants herein.

Eight. That by reason of the premises the said captain of the Tornado is without right or authority to bond said cargo of cotton or any portion thereof; and your claimants respectfully pray that the order herein rendered on the 6th day of March, 1878, so far as it allows the said captain to bond the cotton then in the levee steam cotton-press, which lot
33 of cotton amounted to five hundred bales, may be modified so as to

direct that your present claimants be allowed to bond the same; and further pray that said cotton and the proceeds of the cargo sold or that may be sold be restored to them.

And thereupon these said claimants pray for leave of the court to file this claim, and that the orders and relief herein above prayed for may be granted to them, and that they may be permitted to appear herein by counsel, and by answer and proper pleadings and proofs defend the said cargo and the proceeds thereof from any and all demands now made against it by the libellants and intervening libellants, or other parties, or demands that may be asserted against the same, and that otherwise right and justice may be administered in the premises.

(Signed) J. McCONNELL, *Proctor.*

The undersigned, being severally sworn, say that the facts stated in the foregoing claim are true to the best of their knowledge, information, and belief.

(Signed) JAS. A. WHITLOCK,
Special Agent Atlantic Mutual Ins. Co.

34 (Signed) ED. A. TALFREY,
President Factors & Traders' Ins. Co.

" PIM, FORWARD & CO.

" ARTHUR J. MITCHEL,
Agents for Brit. & For. M. Ins. Co.

" W. A. BELL,
Pres'd't pro tempore New Orleans Ins. Association.

" GEORGE MATHU,
Agent Liverpool Underwriters' Association and Standard Marine Ins. Co., except as to the facts in regard to the Standard Marine Ins. Co. he is yet without positive information and is uncertain, but believes the facts to be as stated.

(Signed) S. A. MORITZ,
Agent Rhenish-West. Lloyd's at M. Gladbach,

" MARSHALL J. SMITH & CO.,
For the Ins. Co. of North America, of Ph., and Phœnix Ins. Co., of N. Y., except that as to the said Phœnix Ins. Co. we believe the abandonment has been or certainly will be made and accepted.

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Comm'r for Dist. of La.

NEW ORLEANS INSURANCE ASSOCIATION,
No. 192 *Canal st.*

35 *New Orleans, March* 14, 1878.

We hereby certify that on the 13th February, 1878, the New Orleans Insurance Association insured for Messrs. H. & B. Beer, of this city, (484) four hundred and eight-four bales of cotton, marked as follows: T. O. W. 251, L. E. L. 233 bales, all laden on the English ship Tornado, and that said association issued to them their certificate of insurance, No. 473, for said cotton, for the sum of ($22,200) twenty-two thousand two hundred dollars, gold, payable in case of loss at the banking-house of Messrs. Kraenthler & Mieville, London; and that on the 11 March, 1878, funds were transmitted by cable to said bankers, and they were requested by ca-

ble and mail to pay the loss and return forthwith the certificate and the bills of lading.

(Signed) G. LANAUX.
[SEAL.] WM. A. BELL,
Presd't pro tem. N. O. Ins. Association.

OFFICE 182 GRAVIER ST.,
New Orleans, 18th March, '78.

36 I hereby certify that on the 19th February, 1878, I insured for Messrs. T. A. Wolley & Co., of this city (86) eighty-six bales cotton marked as follows: S. L. E., 1–42, 44, 46–73, 75–78, 80–84, 86–91, laden on the British ship Tornado, and that issued to them their certificate of insurance for said cotton for the sum of $4,660 gold, say forty-six hundred sixty dollars gold, payable, in case of loss, at the counting-house of Messrs. N. M. de. Rothschild & Sons, London, and that instructions have been forwarded for the transmission of the bills of lading.

(Signed) S. A. MORITZ,
Agent Rhenish-Westphalian Lloyd.

PIM, FORWARD & CO.,
NEW YORK & NEW ORLEANS,
New Orleans, 187 , *P. O. Box,* 613.

We, the undersigned, agents in this city of the British and Foreign Marine Insurance Company (limited), of Liverpool, do hereby certify, 1st. That we have accepted risks on the British ship Tornado as follows:

37 In certificate No. 246, issued Feb'y 11, L A W, 200 bl. cotton, % Jas. T. Wood & Co., to the extent of $8,110.00.

In certificate No. 250, issued Feb'y 15, E W E, 150 bl. cotton, % Jas. T. Wood & Co., to the extent of $5,710.00.

In certificate No. 255, issued Feb'y 18, S E P, 100 bl. cotton, % James T. Wood & Co., to the extent of $6,080.00.

In certificate No. 261, issued Feb'y 20, A L T, 69 bl. cotton, % James T. Wood & Co., to the extent of $4,000.00.

In certificate No. 262, issued Feb'y 20, B E B, 150 bl. cotton, % James T. Wood & Co., to the extent of $5,730.00.

In certificate No. 264, issued Feb'y 21, I V ⊕ 100, V N ⊕ 100, E I ⊕ 50—250 bl. cotton, % Muir Buchart & Co., to the extent of $11,000.00.

In certificate No. 271, issued Feb'y 23, O L ⊛, 20 bl. cotton, % Muir Buchworth & Co., to the extent of $900.00.

In all on 939 bl. cotton to the extent of $41,530.00.

2d. That whereas the said ship Tornado caught fire on the 24th of February, 1878, and the said cotton has been destroyed, more or less, the said British and Foreign Marine Insurance Company, limited, has paid the interested parties, as per their cable of February 15th, 1878, the full amount of the risks accepted in the British ship Tornado.

38 That the certificates of insurance and bills of lading for the cotton above mentioned will be produced by us on receipt thereof from Liverpool.

(Signed) PIM, FORWARD & CO., *Agents.*
ARTHUR J. MITCHEL.

NEW ORLEANS, *March* , 1878.

This is to certify that the Insurance Company of North America, of Philadelphia, and the Phœnix Ins. Co., of Brooklyn, insured respectively, to wit: The Insurance Co. of North America, of Phil'a, insured A. A. Paton & Co., of Memphis, (200) two hundred bales cotton mark' G O F; (100) one hundred bales R C C; (100) one hundred bales, and the Phenix Insurance Co., of Brooklyn, insured Messrs. Watson & Hill, of Memphis, (81) eighty-one bales cotton marked B V D; (3) three bales C O X; (12) twelve bales D O E; (22) twenty-two bales F I T; (21) twenty-one bales F I T; (11) eleven bales and W A G; (12) twelve bales cotton,—all laden in the British ship Tornado, and issued to them their certificates of in-

39 surance, and have transmitted by cable and mail to their bankers in London funds to pay the loss on the above-mentioned cotton, and requested the return forthwith of the certificates of insurance and the bills of lading of said cotton.

MARSHALL J. SMITH & CO.,
Agents Ins. Co. of North America, of Phi.,
Phœnix Ins. Co., Brooklyn.

FACTORS & TRADERS' INSURANCE CO.,
No. 37 Carondelet street, New Orleans, March 18th, 1878.

We hereby certify that on the 8th February, 1878, the Factors & Traders' Insurance Company insured for Messrs. H. & B. Beer, of this city, (260) two hundred and sixty bales of cotton, and on the 13th February, 1878, (311) three hundred and eleven bales of cotton; in all, (571) five hundred and seventy-one bales cotton for H. & B. Beer, cotton marked as follows: P O D 110 bales, W R Y 50 bales, N E P 44 bales, W B V 17 bales, Y S G 39 bales, V E V 61 bales, C R J 55 bales, D K C 26 bales, Y A Y 169 bales—all sent to be laden on board the English

40 ship Tornado, and that the said company issued their certificates, Nos. 93, 94, 95, 100, & 101, for the sum of ($26,800) twenty-six thousand eight hundred dollars gold, payable in case of loss at the office of the Union Marine Insurance Company, Liverpool or London, and that on the 27th February, 1878, funds were transmitted by mail to said company, and they were requested by cable and mail to pay the loss and return forthwith the certificates and bills of lading; and that the loss has been so paid, and that a portion of the bills of lading and certificates are already here, and the remainder will be here very soon.

(Signed) ED. A. PALFREY,
President Factors & Traders' Ins. Co.

Attest:
THOS. F. WALKER, *Sec'y.*

Statements (Cotton).

Cotton on ship Tornado insured by Atlantic Mutual Insurance Co.

Date.	No. policy.	Assured & mark insured.	Number of bales.	Amount insured.	Where payable.
1878.					
Jan'y 26	16,987	Hobart, Smith & Co., N. Y.:			
41		Pink, 5 3/8c; Joy, 50 3/8c	55	$2,986 00	J. S. Morgan & Co., London.
" 28	16,988	Hobart, Smith & Co., N. Y.:			
		M I C, 50 3/8c	50	2,850 00	Do.
" 28	17,016	Hobart, Smith & Co., N. Y.:			
		Gold, 13 3/8c E A R, 50 3/8c Boy, 29 3/8c E K E, 51 " E Y E, 14 " J A W, 51 " B A D, 50 " J E W, 51 " E L M, 50 " J E M, 50	409	24,059 00	Do.
" 29	17,034	Williams & Crane, New Orleans:			
		W W C U 1 G, 1-50; 50 3/8c E 1-50; 50 3/8c K 1	100	5,600 00	Do.
" 29	17,088	Williams & Crane, New Orleans:			
		W&C Y D N, 1-50; 50 3/8c	50	2,350 00	Do.
" 29	17,117	Williams & Crane, New Orleans:			
		W&C Y E L, 1-50; 50 3/8c	50	2,350 00	Do.
Jan'y 24	17,108	Fatman & Co., N. Y.:	.....	.....	J. S. Morgan & Co., London.
		K E 1-100; A C E 1-100; X/A U A 1-100 V V W L A 1-100; J Y E 1-100; C O E 1-100 A A E 1-100; B B 1-100; C F V E 1-100 NT L A 1-100; D Q L A 1-100; R I H L A 1-100 B T A W A C L A 1-100; L A 1-100; E R E 40 3/8c	1,440	92,000 00	Do.
Feb'y 9	17,076	Anderson & Simpson, N. O.:			
		P | W | 42 3/8c; F Q P 11 3/8c	13	730 00	S. R. Grave & Son, Liverpool.
				$132,925 00	

On 2,167 bales cotton, as above, abandonment of which has been made to and accepted by the Atlantic Mutual Insurance Company, and total loss paid by them.

JAS. A. WHITLOCK,
Special Agent of the Atlantic Mutual Ins. Co.

Dated, New Orleans, March, 1878.

42 STATE OF LOUISIANA,
Port of New Orleans:

SURVEYOR'S OFFICE, No. 10 CARONDELET STREET.

The undersigned, inspectors for underwriters of New Orleans and general marine and river surveyors for the inspection of vessels, steamers, and cargoes, by request of parties interested, have this day, March 14, 1878, held a survey on board of the British ship Tornado, recently on fire, to ascertain the extent of damage by said fire, and also the condition of the ship.

We find in the lower hold on the port side from forward part of after hatch to her stern the beams, carlines, knees, and clamps, together with staunchions, burnt and destroyed, also the lower deck burnt out.

In the lower between-decks all the beams, carlines, knees, and some frames and clamps on the port side burnt and destroyed, and the outside planking nearly burnt through, and the mizzen mast nearly burnt off and deck burnt out.

43 In the upper between-decks on the port side from the breast hooks on port side to the after part of mizzen mast on starboard side all the beams, carlines, knees, and clamps burnt and destroyed, together with a large number of frames, the main deck badly cut up and burnt; and we do hereby certify:

That the said ship is badly strained, caused by the burning off of said clamps, bindings, and decks, and by the ship grounding when full of water.

We are of the opinion that said ship is so badly burnt and strained that she is unworthy of repair, as the costs of said repairs would exceed the value of said ship when repaired.

Given under our hands at the city of New Orleans, this 14th day of March, 1878.

(Signed) THOS. CONWAY,
" S. B. FROST,
" R. L. ROBERTSON,
" G. SCHNEIDER,
Surveyors.

44 Let this intervening claim be filed, and let the claimants therein named be allowed to appear and defend their interests as such by answer or otherwise as prayed for; let the order of this court, dated March 6th, 1878, so far as it allows the captain of the ship Tornado to bond certain cotton, be suspended until the further order of this court, and let the intervening claimants be allowed to deposit with the clerk of this court as soon as received by them respectively, the bills of lading of the cotton insured by them.

EDWARD C. BILLINGS, *Judge.*

MARCH 19, 1878.

Consolidated cases.

NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, CARGO, & FREIGHT. } No. 11207.

W. H. ELLIS, MASTER, & OTHERS
vs.
CARGO OF SHIP TORNADO. } No. 11229.

Intervening answer of the underwriters.—Filed April 25, 1878.

To the hon'ble E. C. Billings, judge of the district court of the
45 United States for the district of Louisiana.

The intervening answer of—

1. The Atlantic Mutual Insurance Company, of New York, a corporation created under the laws of New York, domiciliated in New York City, and of which James A. Whitlock is the special agent in the city of New Orleans;

2. The British and Foreign Marine Insurance Company, of Liverpool, a corporation created under the laws of Great Britain and domiciliated in Liverpool, England, of which Pim, Forward & Co. are the agents in New Orleans;

3. The Standard Marine Insurance Company, of Liverpool, England, a corporation created under the laws of Great Britain, and domiciliated in Liverpool, and of which George Mathu is agent in New Orleans, and of the Indemnity Insurance Company of London, England;

4. The Factors and Traders' Insurance Company, of New Orleans, a corporation created under the laws of Louisiana and domiciliated in New Orleans, and of which Edward Palfrey is president;

46 5. The New Orleans Insurance Association, a corporation created under the laws of the State of Louisiana and domiciliated in New Orleans, and of which Wm. A. Bell is president pro term;

6. The Insurance Company of North America, a corporation created under the laws of Pennsylvania and domiciliated in Philadelphia, and of which Marshall J. Smith & Co. are agents in New Orleans;

7. The Phœnix Insurance Company, of Brooklyn, a corporation created under the laws of New York and domiciliated in Brooklyn, and of which Marshall J. Smith & Co. are agents in New Orleans;

8. The Rheinish-Westphalian Lloyds' Marine Insurance Company of M. Gladbach, a corporation created under the laws of Germany, and of which S. A. Moritz is agent in the city of New Orleans;

intervening for their interests in the cargo of cotton and proceeds of cargo of cotton of the ship Tornado, to the libels and amended libels of the said libellants, the New Harbor Protection Company and of W.
47 H. Ellis, master, and others, as well as of the various intervening libellants, answers and alleges as follows:

I. These respondents and claimants now refer to and adopt as part of this answer the allegations and averments made in, and the exhibits attached to, their intervening claim filed herein on the 19th of March, 1878, as if now specially reiterated.

II. That your respondents and claimants, as underwriters, have accepted abandonment from the shippers, and paid a total loss on said cargo of 5,195 bales of cotton, and of the proceeds of said cotton, as follows:

1. Atlantic Mutual Ins. Co. insured 2,167 b. c. for	$132,925
2. British & F. Marine insured 1,050 b. c. for	$48,474
3. Standard Marine and Indemnity Ins. Co. of London, insured 556 b. c. for	$25,700
4. The Factors & Traders' Ins. Co. 571 b. c. for	$26,800
5. N. O. Insurance Association insured 484 b. c. for	$22,200
6. Ins. Co. of North America insured 200 b. c. for	$11,000
48 7. Phœnix Ins. Co., of Brooklyn, insured 81 b. c. for	$4,400
8. Rheinish-Westphalian Lloyd's insured 86 b. c. for	4,660
Total, 5,195	$276,159

III. That for the purposes of brevity in pleading, an agreement in writing was made in the said suit No. 11207, and signed by all the proctors of record in behalf of the libellants therein, and of all the intervening libellants, as follows, to wit:

To save costs and unnecessary labor, it is agreed that the intervening claimants, the insurers of the cargo, in defending, be required to file only one answer, setting up any matters of special defence, and that the allegations of the libel and interventions herein be held to be specially denied (except as may be admitted by their said answer), and strict proof required as if answers had been duly prepared and filed as to each libellant and intervenor, the original of which stipulation in writing is annexed in the margin and made part hereof.

49 Further answering in regard to the facts and incidents of the fire on said ship, your respondents charge that the facts are not correctly stated in said libels and intervening libels, but they are informed and charge the truth to be as follows: That on Sunday, February 24th, 1878, at about 6 o'clock a. m., smoke was discovered issuing from the main hatch; the fire alarm was sounded immediately; the crew then aboard, consisting of six officers and about twelve men, went resolutely to work, and then engines and firemen of the fire department of New Orleans were quickly on the spot and were working effectively with water to extinguish the fire, which was thrown down the main hatch chiefly. That the position of the ship was favorable to aid from the fire-engines as she lay securely moored to and along-side the wharf opposite post No. 23 in the third district, and entirely within the fire limits of said district and city. That after said labors of the crew and the fire department had continued about an hour and a half, the tug Protector arrived, and proposed

50 to Captain Ellis to extinguish the fire very speedily (in less than an hour) by the use of carbonic-acid gas, at the same expressly stipulating that in the event the Protector failed to utterly extinguish the fire with gas no charge whatever would be made for the services. That upon these terms Captain Ellis permitted the Protector to take charge of the ship, which, after six hours' experiment, proved a failure; and the fire companies aforesaid, under the guidance of their chief, Thomas O'Connor, again played three streams of water into the ship, cutting the deck in places for that purpose.

That at 6 p. m. of the 24th, as the smoke seemed again on the increase,

a renewed attempt with gas was made on the same terms by the Protector, which continued through the night with similar unsuccessful result as in the first attempt.

That accordingly on the morning of the 25th the fire-engines and the crew of the vessel again went to work pumping in water, aided by the tugs Aspinwall and Charlie Wood—the Protector then pumping out water—the stevedores, Drysdale & Sons, and Canby, under directions of the
51 captain, being engaged in taking out cotton. That as the smoke continued to increase the captain concluded to fill the ship with water to extinguish the fire, but not so as to sink the vessel.

That on the 26th this work progressed favorably, the work of unloading going on at the same time by the stevedores' men, and the fire was nearly extinguished, the water in the hold, being within four feet of the upper or main deck. The captain of the Tornado then directed the engines & tugs to cease further pumping into the ship and ordered them to promptly place their suctions in the ships and pump her out.

That instead of their continuing at work with their suctions pumping out, the tugs, among which were the Protector, Aspinwall, and Charlie Wood, unaccountably, and without notice to the captain of the Tornado or to the men then engaged in taking cotton out of the ship, suddenly and without proper cause or excuse abandoned the ship Tornado, and caused her thus to settle down and sink, which occurred in about an hour
52 and a half after the tugs had so abandoned her.

That the captain and officers of the Tornado called and importuned the said tugs Protector, Aspinwall, and Charlie Wood, and others to return, and by the use of their suctions prevent the sinking of the ship, but in vain; they made no answer.

That previous to the captain of the Tornado having ordered the filling of the ship as aforesaid with water, he first took extraordinary precautions to make the ship fast and secure to the wharf and levee by chains and cables and manilla ropes of great size and strength fastened on shore to the wharf and to posts planted along the levee for purposes of mooring vessels, and made purposely capable of meeting a great strain, and fastened on the ship to the several masts above and below and through the channels of the ship also, the captain having previously also caused soundings of the depth of water of the river outside the vessel to be taken to be assured of the fact that there was no danger of loss of the ship by slipping or sliding
53 out if properly secured to the shore as she was then made.

That in consequence, therefore, of the desertion and abandonment by the said tugs, the ship, on the evening of the 26th, at 7 or 8 o'clock p. m., settled down upon the bottom, so that the water was above her main deck, but with the rails of the bulwarks above water. On the morning of the 27th additional precautions were taken by the captain, and he with his crew and employees made the vessel perfectly secure in her position, rendering her free from danger of sliding out or falling out into deeper water; that at about midday of the 27th, the Tornado, cargo, and freight were seized, and taken into possession and control by the marshal of this hon'l. court at the suit of the libellants, the New Harbor Protection Company, and other libellants herein; that about the same hour B. D. Wood and some others, aided and assisted by the officers and crew of the ship, fastened canvass around the upper part of the ship, by sinking it with

54 weights to a depth a little below the bulwarks which were above water, the divers at the same time stopping the hauser-pipes, scupper-holes, &c., which were at a greater depth than five feet below the wales or upper deck of the ship, the said work of fastening up the holes and placing the canvass being performed without great danger or peril of any kind.

That at about sundown of the 27th the tugs Aspinwall, Protector, and Charlie Wood, Belle Darlington, Continental, Ella Wood, No. 2, Harry Wright, Norman, Rio Grande, N. M. Jones, and others, encircled the ship, but could and did perform no effective service with their suctions in pumping out during the night, because, owing to the darkness and the action of the current of the river in the darkness, the canvass was not kept close to the sides or openings in the bulwarks.

That on the morning of the 28th the work of pumping out said
55 ship was begun in earnest and effectively, and with such ease and dispatch that by 9 o'clock a. m. the ship was raised out of the water sufficiently to enable the stevedores to begin taking out cotton, and by 12 o'clock m. of the same day the water was nearly all pumped out and the tugs all stopped pumping, because they could get no water in their suctions, the small quantity of water remaining thereafter being pumped out by the fire company, the work of a few hours if done continuously.

V. Now, respondents are informed and charge the truth to be that the entire work of pumping out the ship Tornado as aforesaid was unattended with peril or danger of any kind, and could have been accomplished, as they are informed and believe and charge, by any two of the larger tugs, such as the Protector, the Norman, or the Rio Grande, in ten hours' time; that a reasonable and full compensation for the entire work of pumping out said ship as aforesaid, as they are informed and believe and charge, ought not to exceed the sum of five hundred dollars.

56 VI. Respondents are informed and charge the truth to be that at and from 12 o'clock m. on Thursday, the 28th day of February, the said ship Tornado was raised out of the water alongside the wharf, was free from all danger of sinking or again taking in water, as there was then no holes under the water-line as she then lay, and that if the innumerable fleet of tugs, large and small, claiming salvage and compensation extraordinaire herein saw fit to lay around the ship, even against the protest of the captain of the Tornado, such lying around does not and cannot support the demands set up in their libel and interventions herein.

VII. That the work of discharging the cargo by the stevedores progressed thereafter without further interruption than occurred from the levee and wharf becoming blockaded with the discharged cotton and from the delay caused by an abortive attempt of the captain of the Tornado, aided by his agents, Shultz & Co., to set aside the order of this
57 honorable court which had been applied for and obtained by the salvors herein, on the 28th of February, 1878, maintained after hearing by decree rendered them on the 6th day of March, 1878, directing the marshal to sell the cotton on the levee as it came out of the ship in such lots as might accumulate from day to day on two days' advertisement, the gross proceeds of the sale of the cotton sold, reaching the sum of one hundred and sixteen thousand and thirty-two and $\frac{50}{100}$ dollars, with 500 bales still remaining in the custody of the marshal.

VIII. Further answering, your respondents are informed, and therefore aver and charge the truth to be, that of the said 5,195 bales of cotton, 164 never were put on board said ship, but were lying on the wharf or levee, and never had any salvage, for the reason that they never were on board said ship nor on the water.

That 336 bales of cotton were taken out of said ship by the stevedores under the direction and orders of the captain, on the 24th, 25th, and 26th days of February, 1878, before the sinking of said ship, and therefore as to them no claim of any kind exists in behalf of parties working after those dates, or in pumping out or assisting to raise said vessel. That said 500 bales now are in the press in custody of the marshal, and will be bonded in separate lots, so as to preserve and maintain thereon and thereto the respective rights and defences of all parties interested.

IX. That respondents are informed, and charge the truth to be, that during the progress of the unloading of the ship, after the sinking, a portion of the said cotton on the levee again took fire, the flames of which were promptly extinguished by the fire department, who faithfully performed their public duty by remaining by the cotton until it was stored, and that the necessity for their engines and some of their men so remaining was demonstrated by the incident above stated. That there was not the same or any necessity for the tugs to remain, as the fire could not be revived in the cotton aboard the ship after she had been sunk as aforesaid.

X. Further answering, respondents say they have been placed at great disadvantage in preparing this defence herein, as also in caring for their interests as underwriters upon the cargo by the conduct of W. H. Ellis, captain of the Tornado, who neglected and refused (through the advice and co-operation of his agents, Shultz & Co.), to advise and confer with these respondents or their agents, as was his duty to do, as to the conservation of their interests as underwriters upon said cargo.

That they repeatedly cautioned the said captain, verbally and in writing, against making contracts, especially with reference to the handling and storage, &c., of the said cargo when rescued, which proffered advice and co-operation extended in the interest of all concerned was rejected or disregarded upon unfounded pretext, and improvident and illegal contracts made, or attempted to be made, by him, without their knowledge or consent, and greatly damaging to the interests of the owners of the cargo, and to your respondents as underwriters thereon, and afterwards substituted owners.

That in consequence of said conduct of said captain and other acts of record, showing strong bias against your respondents, and other acts of like bad faith, showing an utter disregard of his obligations to protect their interests, they are not bound or affected by any of his acts or attempted contracts in the premises.

They further charge that the said captain made no defence whatever against the salvors or their claims, and when requested to aid your respondents and their counsel with information as to the facts necessary to enable them to prepare their defence herein, he refused to do so.

That long after the said ship had been in the custody of the marshal, and the power of the said captain and his said agents had utterly ceased

for such purposes, even as late as the 16th March, 1878, did the same captain and said agents attempt to give validity and binding force to
61 three bills of the Tugs Norman, Rio Grande, and Harry Wright, amounting in the aggregate to forty thousand dollars, for pumping, &c., and which, as your respondents have already shown, were utterly unfair and extortionate, and without any binding force whatever upon these respondents, but were also collusive overcharges made and approved in bad faith and utterly void.

XI. Further answering in this connection specially the claim of Thomas O'Connor for $19,790, and also by way of peremptory exception thereto, these respondents plead and say:

(1.) That upon the face of his said libel the said O'Connor cannot recover for want of a just cause of action in a court of admiralty.

(2.) That the said O'Connor cannot recover in a court of admiralty for the services alleged in the petition to have been rendured, because they were not maritime services, being rendered on the land, and therefore there is no jurisdiction in this court, sitting as a court of admiralty, over said demand.

(3.) That the said O'Connor was at the time of the rendition of
62 the alleged services chief of the fire department of New Orleans, and all that was done by him and those in his employ to aid him, as detailed in his petition, was done as a matter of duty or in the line of their duty as part of the fire department of the city of New Orleans, and therefore they cannot claim or receive salvage or other compensation therefor, nor can he, the said O'Connor, or his said superintendents or employees be salvors.

(4.) That the said O'Connor, as chief, and the same parties employed (as alleged by him) were paid by contract with the city of N. O. and the Firemen's Charitable Association to extinguish all fires within the corporate limits of said city, and the said steam fire-engines and the apparatus, hose, axes, and other implements belong to the said fire companies as part of the said fire department and association organized for public purposes, and therefore no charge can be made or maintained in this court or elsewhere by the said O'Connor, as an individual, for the use of such property.

63 (5.) That the said O'Connor cannot in this form assert or claim personally for salvage for services really rendered by the fire department and firemen with the fire-engines of the city of New rleans.

(6.) That there is no lien whatever upon the said cargo or its proceeds in favor of said O'Connor that can be enforced in this honorable court.

XII. Further answering, these respondents say that of the 5,195 bales of cotton which was to have constituted the total cargo of said ship Tornado, there were twenty-three bales shipped from Memphis, via the railroad, which did not reach this city until after the 24th February, 1878, and in consequence of the fire were never taken to the said ship, but were stored in the levee steam cotton-press by the said W. H. Ellis, master, and form part of the cargo of said ship, which was insured by your respondents, and which has been abandoned to them, and upon which they have paid total
64 loss, and of which they are claimants, and therefore the sole and exclusive and absolute owners.

Wherefore these respondents pray that the demands of the libellants and several intervening libellants herein be rejected entirely as salvage claims, and when shown by the evidence to possess any merit may be reduced to an amount that will be just, moderate, and reasonable compensation, pro opere et labore, and claims shown to have been made extortionate purposely or collusively may be rejected at the cost of those making the same; and finally that this honorable court will decree that the respondents and claimants be recognized and adjudged to be absolute and sole owners of the said cargo of cotton, and of the proceeds of the sales thereof, and that the surplus of the said proceeds in the registry of the court, after the allowance of the reasonable and moderate compensation aforesaid be awarded and paid to these respondents.

And these respondents will ever pray, &c., &c.

(Signed) J. McCONNELL, *Proctor.*

65 The undersigned, being severally sworn, say that the facts and allegations contained in the foregoing answer are true to the best of their information, knowledge, and belief.

(Signed) JAMES A. WHITLOCK,
Special Ag't Atlantic Mut. Ins. Co.

(Signed) E. A. PALFREY,
President Factors and Traders' Ins. Co.

(Signed) p. p. PIM, FORWARD, & CO.
ARTHUR J. MITCHELL,
Ag't Bris. For. M. Ins. Co.

(Signed) MARSHALL J. SMITH & CO.,
Agent of North America & Phœnix Ins. Co.

(Signed) GEO. MATHU,
Agent Standard Marine Ins. Co., Liverpool Underwriters' Association.

(Signed) S. A. MORITZ,
Agent of Rhenish-Westphalian Lloyd's.

(Signed) WM. A. BELL,
President pro tem. N. O. Ins. Association.

United States district court, district of Louisiana. In admiralty.

NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, &c. } No. 11207.

Intervention Ocean Tow-boat Company.—Filed March 23d, 1878.

66 To the honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

The intervening libel of the Ocean Tow-Boat Company, a corporation under the laws of Louisiana, domiciled in New Orleans, against the ship Tornado, her cargo and freight, her boats, tackle, &c., and the proceeds thereof, in the registry of this court, said vessel and cargo now lying in the port of New Orleans, in the custody of the United States marshal herein, by virtue of an admiralty warrant in this cause, and against all persons intervening herein, in a cause of contract, civil and maritime: and thereupon intervenor alleges as follows:

First. That on 27th February, 1878, these libellants were employed by Wm. H. Ellis, master, and Shultz & Co., agents, of said ship Tornado, to

pump out and raise said ship and her cargo of about 5,800 bales cotton, said ship being then sunken in the Mississippi River opposite post No. 22, third district, with the pumps and appliances of
67 the steam tow-boat Rio Grande, belonging to libellants, and said captain and agent contracted and agreed with libellants to pay for said services the sum of fifty dollars per hour; that said tow-boat Rio Grande went to work pumping out said ship at 6 o'clock p. m. on said day, and continued constantly at work until 12th March, 1878, at 4 o'clock a. m., when said work was successfully finished, and said tow-boat was so employed 298 hours, for which, under said contract libellants are entitled to be paid $14,900, as will more fully appear by the detailed bill hereto annexed and made part hereof and marked "Schedule A," which has been approved by said captain and agents.

Second. That at the time said contract was made with libellants the United States marshal had not seized said ship Tornado, but after libellants got to work and had it well in hand, and had ascertained that it could be successfully accomplished, the marshal seized said sunken ship as she lay in libellant's control, whereupon libellants notified said
68 marshal of their said contract, and said marshal ratified and confirmed the same, and directed libellants to proceed thereunder to finish their work.

Third. That but for the services of libellants as aforesaid said ship would have become a total loss, and libellants' said services were well worth said sum of $14,900.

Fourth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this hon. court.

Wherefore intervening libellant pray that process in due form of law may issue herein, according to the course of courts of admiralty, and that after due proceedings this honorable court will pronounce for the intervening libellant's aforesaid demand, and decree the same to be paid with costs by the said vessel, her boats, tackle, apparel, and furniture, or out of the proceeds thereof when sold; and pray for such other further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

(Signed) HORNOR & BENEDICT, *Proctors.*
" L. LA COMBE, *Pres'd't.*

69 *Ship Tornado, tackle and cargo and freight-money, Jack Wharton, United States marshal, and whoever it may concern.*

To amount due, as per contract with master and agents ship Tornado and cargo, continued by the U. S. marshal, in raising the ship Tornado, saving the said vessel and 5,000 bales of cotton, and safely securing same, services of steam-tug Rio Grande, with pumps and wrecking apparatus and steam machinery, from 6 p. m. February 27th to 4 a. m. March 12th, 298 hours, @ $50 per hour..... 14,900

New Orleans, 16th March, 1878.

Approved.

(Signed) WM. H. ELLIS,
Master Ship Tornado.
SHULTZ & CO., *Agents.*

Schedule A.

Let this intervention be filed.
March 23d, 1878.
(Signed) EDWARD C. BILLINGS, *Judge.*

Intervention of the owners of the Norman.—Filed March 23d, 1878.

70 To the hon. the judge of the district court of the U. S. for the district of Louisiana:

Stephen Flanagan and James M. Flanagan, of Philadelphia, Pa., and Edward A. Yorke, resident of New Orleans, La., doth exhibit this their libel of intervention on their own behalf as owners of the tug Norman in a cause of salvage contract, civil and maritime, against the British ship Tornado, her furniture, boats, and tackle, and cargo and proceeds of cargo sold, now in the custody of this hon. court, and libelled in the cause of the New Harbor Protection Co. vs. The Ship Tornado, &c., No. 11207, docket of this hon. court, doth allege as follows:

1st. That on the 27th February, 1878, at 6 p. m., the steam-tug Norman, property of libellants, of tons burthen, duly enrolled and licensed under the laws of the U. S., provided with a powerful apparatus and machinery for pumping water and for wrecking and salvage purposes in case of fire, and manned with a competent crew and officers by
71 virtue of an agreement between the representative owner of said Norman and the master and agents of said ship Tornado, did repair to the British ship Tornado, laden with a cargo of cotton of over 5,000 bales, lying submerged in the waters of the Mississippi River, near the wharf in the 3d district of this city, filled by the Protector mainly, and then left by her in a sinking condition, with her decks and port rail under water.

2d. That at time said ship Tornado laid upon the side of a sloping bank, and was gradually and surely settling into the deep water from her port side, and in a short time would have disappeared beneath the waters and been a total loss.

3d. That while in this situation, making it dangerous to the said Norman, the said Norman came alongside the sinking ship and cargo and began to apply and did apply her several pumps, and by the aid of her machinery succeeded in pumping out the water from the ship, thereby enabling the cotton to be broken out and ship's cargo relieved from all danger.

72 4. That said services were continued for several days at first until the ship began to float, full of danger to property of libellants by reason of the danger of the ship sliding over and submerging tow-boat, the weight and size of said ship being much greater than that of the Norman.

5. That said tug Norman remained alongside of the ship and cargo aforesaid until 8 a. m. March 11, 1878, pumping as the necessities of the case required, and necessarily so and until the safety of ship and cargo was assured, and then left the said ship and cargo in the hands of the marshal, seized in the suit aforesaid.

6th. That said services of the tug Norman were effectual in saving ship and cargo, and notwithstanding the efforts of the other tugs the said Norman was necessary to the effective salving of said ship and cargo, and li-

bellants have reason to believe that but for the timely aid of the Norman the said ship and cargo would now be a total loss in the bottom of
73 the Mississippi River beyond recovery or any process of this hon. court.

7th. That libellant herein, by reason of the capital invested, expenditures in manning and maintaining this tug-boat, as well as risk to property and this long-continued service, entitled to a liberal compensation for their said services as detailed.

8th. That said services herein set forth have been recognized by the master of said ship Tornado, as will appear from the annexed bill, approved by said master and made part hereof, amounting to thirteen thousand and nine hundred dollars, which said amount, libellant respectfully urge upon the court, would be a fair compensation for their services.

9th. That when libellants approached said ship in its sinking condition the same was under seizure by the U. S. marshal for this district, and libellants commenced labor upon said ship and cargo, and said marshal has fully recognized the services of libellants herein by continuing them until the saving of the ship and cargo was fully assured.

10th. That all and singular the premises are true and within the admiralty jurisdiction of this hon. court.

74 Wherefore libellants pray that this intervention be filed, and that admiralty process do issue against said ship, cargo, and proceeds of said ship and cargo, that they be paid for the interest as owners in said Norman the sum of thirteen thousand and nine hundred dollars, and for such other remedy and relief as to right can appertain.

(Signed) E. D. CRAIG, *Proctor.*
" EDWARD A. YORKE.

Sworn to and subscribed before me this 23d March, 1878.
(Signed) H. J. ARMSTRONG, *Not. Pub.*

Let this intervention be filed and process issue as prayed for.
New Orleans, March 23d, 1878.
(Signed) EDWARD C. BILLINGS, *Judge.*

Bill annexed to intervention of the owners of the tug Norman.

Ship Tornado, tackle and cargo and freight-money, Jack Wharton, U. S. marshal, and
75 *whom it may concern, to tug-boat Norman & owners, Dr.*

To amount due as per contract, with master and agent ship Tornado and cargo, confirmed and ratified by U. S. marshal, in raising ship Tornado, saving said vessel and 5,000 bales cotton, and safely securing same for action of court, services of tug-boat Norman, with pumps and wrecking apparatus and steam machinery, from 6 p. m., February 27th, 1878, to 8 a. m., March 11th, 1878, making 278 hours @ 50 per hour.....	$13, 900 00

Approved.
(Signed) WM. H. ELLIS,
Master Ship Tornado.
SHULTZ & CO., *Agents.*

United States district court, district of Louisiana, in admiralty.

THE NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, HER CARGO, &C. } No. 11207.

Libel of intervention of Good Intent Tow-boat Company.—Filed March 25th, 1878.

The Good Intent Tow-boat Company of Louisiana, a corporation created and formed under the laws of the State of Louisiana
76 and domiciliated in the city of New Orleans and State of Louisiana, and whereof Wm. G. Coyle is president, exhibiting this their intervening libel against the British ship Tornado, whereof W. H. Ellis now is or lately was master, now in the port of New Orleans, in the aforesaid district, and within the admiralty and maritime jurisidiction of this honorable court, and now under seizure by the marshal of the United States, her boats, tackle, apparel, and furniture; and also against the cargo laden on board the said ship at the time when the contract hereinafter mentioned was entered into and services rendered, and the proceeds thereof if sold, in the registry of this honorable court, and against her freight, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, and thereupon these libellants do allege and articulately propound as follows:

First. That your libellants are the owners and proprietors of the
77 certain steam tow-boat called the , with her steam-engines, boiler, machinery, tackle, apparel, and other furniture, which said tow-boat was duly licensed and enrolled in this collection district by your libellants to pursue the coasting trade, of about 160 tons burden, and well furnished and equipped, with powerful steam-pumps, hose, suctions, etc., for performing, towing, pumping, and salvage services, and putting out fire with water or steam.

Second. That on Sunday, the 24th day of February, 1878, while the said ship Tornado, of 1,700 tons burden or thereabouts, was lying alongside of the wharf at post in the 3d district of the city of New Orleans, at or about the foot of Marigny street, with a valuable cargo on board, consisting of about 5,190 bales of cotton, a fire was discovered on board of said ship at about 5 o'clock a. m.; that thereupon the steam-tug called the Protector proceeded to same vessel and undertook to extinguish said fire by frrcing carbonic acid gas into the hold of said vessel; that
78 said attempts were several times repeated during said day and during the night of said day, and during the 25th and 26th days of February, 1878, following, but were totally unsuccessful and a failure, and meantime said fire continued to range fiercely and threatened the entire destruction of said vessel and her cargo; that during the intervals between said experiments various steam-tugs employed in and about and belonging to the port of New Orleans were employed or volunteered their services by means of pumping apparatus with which they are provided, to pump water into said ship and upon said burning cargo, in order to extinguish said fire.

Third. That in the forenoon of the 26th day of February, 1878, the experiments performed by said steam-tug Protector having totally failed,

the same were finally abandoned as impracticable and useless, and the said ship and cargo were on fire from end to end, and threatened with immediate and total destruction, and the numerous steam-tugs as aforesaid and the fire department of the city of New Orleans were engaged in filling
79 said ship with water; that said ship was in that manner filled with water and sank where she lay alongside the wharf, so that her upper deck was several feet under water, her bottom resting on the steep sloping bank of said river badly listed towards her port side, and with her port rail nearly under water, in great peril of slipping or sliding off into the deep water of said river or of completely careening towards her port side and being totally lost.

Fourth. That on Wednesday, the 27th day of February, 1878, the said steam-tug Harry Wright, at the request of the master of said ship Tornado, proceeded to said ship, and found her lying under water as described in the third article of this libel; that at that time all efforts on the part of the numerous steam-tugs about and near to said ship had been suspended or abandoned; that great difficulty and danger were experienced in getting into a position by said steam-tug Harry Wright near said ship in order to render efficient services in pumping out the water that filled her hold and for many feet deep covered her decks; that
80 finally the said steam-tug Harry Wright got a good position for service just astern said ship Tornado, and ran her large pipes and hose into said ship, and with her large and powerful pumps, with which said steam-tug is equipped for greater efficiency in putting out fires on burning ships and for rendering other services to vessels in distress in and about the harbor of New Orleans, began to pump water from and off and out of said ship and so continued to render services until late in the afternoon of Thursday, the 28th day of February, 1878, when said ship had been relieved of the water that had filled her and underneath which she was sunk and was raised and salved with her said cargo; that thereupon the unloading of said cargo began and has since continued.

Fifth. That your libellants, said steam-tug Harry Wright, at the request of the persons having the charge and custody of said ship and cargo, after ceasing to render service with her pumping apparatus, as aforesaid, said ship Tornado and cargo having been raised and saved, said steam-tug remained by and near to said ship, ready and
81 willing to render any service to said ship that might be required—so remaining until Saturday, the 9th day of March, 1878, at 6 o'clock a. m., when nearly all of said cargo had been discharged; that during the entire period that your libellants said steam-tug was engaged in pumping water from and off and out of said ship Tornado, together with the time that she remained by and near to said ship, pumping, when needed, and ready for any emergency that might arise, to wit, from the 27th day of February, 1878, at 10 o'clock a. m., up to or until Saturday, the 9th day of March, 1878, at 6 o'clock a. m.; that during said entire period your libellants were acting under and by virtue of a certain contract entered into with the said steam-tug Harry Wright, to render said services, and to remain by and near to said ship during the time above referred to, which contract was first made and entered into on this 27th of February, 1878, aforesaid, with W. H. Ellis, master of said ship Tornado, and Shultz & Co., agents; and that after said ship and cargo were seized

by process issued from this honorable court, that the United
82 States marshal, who took said property into his possession and custody, continued the employment of said steam-tug Harry Wright, under the same contract; that under said contract the said steam-tug Harry Wright was to receive fifty dollars per hour for the entire period of time that she was actively engaged in pumping water out of or from said ship Tornado, and that she remained by and near said ship; that said tug was employed and engaged under said contract 224 hours, at the rate of $50 per hour, which is a fair and reasonable compensation, and entitles said Harry Wright to the sum of ($11,200) eleven thousand two hundred dollars, as will more fully and at largely appear by reference to the exhibit hereto annexed and made part hereof, approved by W. H. Ellis, master of the ship Tornado, and Shultz & Co., agents.

Sixth. That the said ship Tornado, her tackle, apparel, furniture, and cargo, consisting of about 5,100 bales of cotton and freight, as aforesaid, were saved from absolute and total destruction and loss by said
83 pumping apparatus of the steam-tug Harry Wright, and that the property saved is of great value, and that the sum of eleven thousand two hundred dollars, claimed under the aforesaid contract, is a just, fair, and reasonable compensation for the services rendered.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellants pray that this libel of intervention be filed, and that admiralty process do issue against said ship Tornado and cargo remaining unsold, and against the proceeds of the sale of said cargo, in the registry of this honorable court, and that out of the entire proceeds of ship and cargo that the sum of eleven thousand two hundred dollars be decreed in favor of libellants intervening herein for the aforesaid services under the aforesaid contract, and for all such further aid, remedy, and relief as to causes of admiralty appertain and costs.

(Signed) H. E. UPTON, *Proctor.*

84 William G. Coyle, being first duly sworn, deposes that he is the president of the Good Intent Tow-Boat Company of Louisiana, and that the facts and allegations contained in the foregoing libel are true to the best of his knowledge and belief.

(Signed) W. G. COYLE.

Sworn to and subscribed before me this 25th March, 1878.

R. DEVONSHIRE, *D'y Clerk.*

Let this intervention be filed.
March 25th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Contract annexed to the above libel of intervention.

Ship Tornado, tackle & cargo and freight-money, Jack Wharton, U. S. marshal, and whoever it may concern, to Good Intent Tow-boat Company, Dr.

To amount due as per contract with master and agents ship Tornado and cargo, continued by the U. S. marshal, on raising the ship Tornado, saving the said vessel and 5,000
85 bales of cotton and safely securing same, services of

steam-tug Harry Wright with pumps and wrecking apparatus, and steam machinery, from 10 p. m., 27th February, to Saturday, March 9th, at 6 a. m., making 224 hours, @ $50.00 per hour $11,200

New Orleans, March 16th, '78.
Approved.
(Signed) W. H. ELLIS,
Master Ship Tornado.
SHULTZ & CO., *Agents.*

NEW HARBOR PROTECTION CO.
vs.
THE SHIP TORNADO. } 11207. U. S. D. C.

Amendment to intervention of owners of Norman.—Filed April 5th, 1878.

Now come the owners of the steam-tug Norman, and beg leave to amend their intervention on file as follows:

1st. That in addition to the matters heretofore set up they allege that they entered into a contract with the master and agents of the ship Tornado, while said ship and cargo lay submerged in the waters of the
86 Mississippi and a short time before the seizure thereof by the U. S. marshal for the district of Louisiana, to assist in pumping out and raising said ship and cargo by the use of the said Norman and her appliances at the rate of $50.00 per hour; that in accordance with said contract the said Norman, under the circumstances detailed in the original intervention, went alongside said ship at 6 p. m. on the 27th Feb. 1878, and remained 278 hours, as per detailed statement of the bill annexed to the original intervention, and approved by the master and agents of said ship, &c., and that the amount due intervenors now as per said contract amounts to $13,900, as already set forth, and for which they ask judgment against said ship, cargo, proceeds, and freight.

2d. Intervenors herein beg leave to amend their prayer of the original intervention by inserting the word "freight" after the word "cargo" in said prayer, and for all such other and further aid and remedy and relief as to the cause appertains.

(Signed) E. D. CRAIG,
Proctor for Owners of Norman.

87 Let the amendment to the intervention of the owners of the Norman heretofore filed be allowed and filed.
(Signed) EDWARD C. BILLINGS, *Judge.*

NEW ORLEANS, *April 5th*, 1878.

U. S. district court, district of Louisiana, in admiralty.

THE NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO & FREIGHT. } No. 11207.

Answer of owners of ship Tornado.—Filed January 10, 1879.

The answer of R. A. Stewart and J. Stewart, owners and claimants of the ship Tornado, to the libel of the New Harbor Protection Co. of New Orleans against said ship.

And now come R. A. Stewart and J. Stewart, owners of said ship Tornado, and for answer to the libel of the New Harbor Protection Co. of New Orleans, against said ship and freight and cargo, do allege and propound as follows, to wit:

First. That the said R. A. Stewart and J. Stewart were at the
88 time of the seizure of said ship herein the true and bona fide owners thereof, and no other person was owner thereof.

Second. In answer to the first article of said libel, respondents say that they have no knowledge whatever of the alleged pumps, gas apparatus, and other appliances of said steam-tug Protector in said article set forth.

Third. In answer to the second article of said libel, respondents admit that on Sunday, the 24th day of February, 1878, at about six o'clock a. m., said ship Tornado, while lying in the port of New Orleans and at the head of Marigny street in said city, loaded with cargo of about 5,100 bales of cotton and some staves, were discovered to be on fire; that at first water was forced into said ship's hold, and afterwards two thorough trials were made to extinguish said fire by carbonic-acid gas forced in said ship's hold by a gas apparatus of some kind on board of said tug Protector, but both of which attempts failed to extinguish said fire, but that said fire, after the hatches were opened after said gas had been
89 injected into said ship's hold, burned with the greater violence, so much so that finally said ship had to be filled with water before said fire became extinguished, and for the purpose of filling and flooding said ship with water, and at the same time preventing her from sinking said master of said ship caused water to be thrown into said ship's hold by fire-engines on the wharf or levee, and directed and requested said tug Protector and the tugs Aspinwall and Charlie Wood to remain alongside said ship at said times with their suctions in said ship's hold and pump out the water thrown by said fire-engines in said ship, that water might be passing through said cargo and said ship become flooded and at the same time prevented from sinking by said water being sucked from said hold as aforesaid; said tugs Protector, Aspinwall, and Charlie Wood, without any warning or just or reasonable cause therefor, deserted and abandoned said ship and allowed her to sink to the bottom of the river, and which took place solely from said unreasonable and unjustifiable deser-
90 tion as aforesaid, and from which she was after much difficulty raised by the aid of many other tugs, but in the effort of raising the said tug Protector also assisted.

Fourth. Respondents say they cannot answer what purports to be the third article of said libel, because the same do not contain any allegation, but is a blank.

Fifth. In answer to the fifth article of said libel, respondents deny that libellants are entitled to any compensation for salvage services, but aver that for any and all claims for services rendered by said tug Protector prior to the sinking of the said ship were forfeited and lost by said unjustifiable desertion as aforesaid, whereby, and solely in consequence of which, said ship sank as aforesaid, thus necessitating the services of other tugs to raise her, and that the services rendered after said ship was sunk were entirely pumping, for which, under the circumstances as aforesaid, libellant is entitled to little or no compensation.

Sixth. In answer to the fifth article of said libel, respondents
91 deny that the same is true, but aver the truth and facts to be as herein stated.

And now, in answer to the supplemental and amendatory libel herein by said libellant, the New Harbor Protection Company, respondents allege and propound as follows, to wit:

Sixth. In answer to the first article of said supplemental libel, respondents say they have no knowledge of said alleged sum of $2,223.26, but deny that the same was expended as alleged, and further answer to said libel, deny that said ship and cargo was saved by libellant, or that said freight was saved by any one, but aver the truth and facts to be as hereinafter stated.

Seventh. In answer to the second article of said amended libel, respondents deny that the value of said ship when saved was seven thousand dollars, but show, as appears by the sale of said ship, which took place shortly after she was discharged of her said cargo, the value thereof was only $3,500.

Eight'. In answer to the third article of said supplemental libel,
92 respondents admit that the proceeds of sale of the cargo sold by the marshal, and that portion bonded by the claimants of some of the same, is about $135,552.50, but respondents specially deny that said cargo or any portion thereof or said ship was saved by said libellant.

Ninth. In answer to the fourth article of said amended libel, respondents deny that any freight whatever was saved by libellants, but allege the truth and facts to be as follows:

That after said ship sunk, as aforesaid, through the unjustifiable desertion of libellants said boat, as aforesaid; and while said ship was still on the bottom of the river and unsaved, libellant hastened off and libelled said ship and cargo, and caused same to be taken into the possession of the marshal, and after she had been raised, as hereinbefore stated, and before the master of said ship had time, as the agent of all concerned, to claim the said ship and cargo, and bond the same, libellant caused an ex parte order to be entered providing for the sale of the cargo of said
93 ship by the marshal, after days' advertisement, on the levee as the same came out of said ship, which said master, on being made aware of the existence of the same, immediately applied to have said order set aside and annulled, and also applied to bond said vessel and cargo, that the same as far as was possible might be put into condition, sent to its destination, and the freight thereon earned, but that to said application to bond by said master, owing to the most stubborn opposition made by libellant and each every insurance company having risks on the said cargo and embracing the whole thereof, claiming that it was best for their interest that said cargo should be sold and not go into the possession or control of said master, said application to bond was denied, and whereby and in consequence of which denial to bond the whole and entire frieght on said cargo, amounting to , for the sole purpose of earning which libellants had expended, became immediately due and owing, and for the recovery of which
94 freight and expenditures libellants have filed a libel in this hon. court, No. on the docket thereof, to which libellants refer as part of this answer, and which has been consolidated herewith.

(Signed) THOS. J. SEMMES, *Proctor.*

Thomas J. Semmes, being sworn, says he is proctor for R. A. and J. Stewart, the foregoing respondents, who are subjects of Great Britain, and absent from the State of Louisiana, and that the facts and allegations set forth in the foregoing answer are true to the best of his information and belief.

(Signed) THOS. J. SEMMES.

Sworn to and subscribed before me this 10th January, 1879.

(Signed) R. DEVONSHIRE. *D'y Clerk.*

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, Wm. H. Ellis, master of the ship Tornado and bailee for Robert A. Stewart, of London, England,
95 and Jno. Stewart, of New Brunswick, claimants and owners of said ship, as principal, and Carl Kohn, of the city of New Orleans, as surety, are held and firmly bound unto the New Harbor Protection Company, and all other libellants and intervenors in suit No. 11207 in admiralty hereinafter mentioned, in the sum of five thousand dollars ($5,000), lawful money of the United States of America, for the payment whereof to the said New Harbor Protection Co. and other libellants and intervenors, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals hereunto affixed by us at New Orleans this 21 day of March, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of the New Harbor Protection Co. vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered
96 11207, on the docket of the said court, commanding the marshal to seize and take into his possession the said ship & cargo, her tackle, &c., which have been seized accordingly, but has been released from said seizure and delivered to said W. H. Ellis, the claimant and master thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and effect.

(Signed) WM. H. ELLIS. [L. S.]
" C. KOHN. [L. S.]

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Insurance Company
97 of North America, of Philadelphia, Penn., by Marshall J. Smith

& Co., agents, of New Orleans, claimant and owner of twelve bales of cotton, as principal, and C. Kohn as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein the sum of four hundred and twenty dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, &c., R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, and assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals hereunto affixed by us at New Orleans this 25 day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of the New Harbor Protection Co. and Wm. H.
98 Ellis, master, &c., vs. Ship Tornado & cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which twelve bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to M. J. Smith, the agent of the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellant the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Signed) MARSHALL J. SMITH & CO., [L. S.]
Ag'ts for Ins. N. Am., Phil.
" C. KOHN. [L. S.]

99 C. Kohn, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $420 over and above all his just debts and liabilities.

(Signed) C. KOHN.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
(Signed) J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, the New Orleans Insurance Association, by W. A. Bell, president, of New Orleans, claimant and owner of seventeen bales of cotton, as principal, and Wm. A. Bell, as surety, are held and firmly bound unto libellants and intervening libellants that may recover herein the sum of five hundred and ninety-five dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants, W. H. Ellis, master, and R.

A. Stewart and Jno. Stewart, their heirs, executors, administrators,
100 or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of the New Harbor Protection Co. and W. A. Ellis, master, &c., vs. Ship Tornado & cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 17 bales formed a part, which has been seized accordingly, but has been released from said seizure and delivered to W. A. Bell, president of the N. O. Insurance Association, the owner thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that if the
101 said claimant and surety abide by all the orders, interlecutory and final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

NEW ORLEANS INS. ASSOCIATION,
By W. A. BELL, *Pres't pro tem.* [L. S.]
W. A. BELL. [L. S.]

Wm. A. Bell, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $595 over and above all his just debts and liabilities.

WM. A. BELL.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Insurance Company of North America, of Philadelphia, Penn., by M. J. Smith & Co., agents,
102 of New Orleans, claimant and owner of one bale of cotton, as principal, and Carl Kohn as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of thirty-eight dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis and R. A. Stewart and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable

the district court of the United States of America for the district of Louisiana, at the suits of the New Harbor Protection Company, and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship
103 and cargo, of which the one bale cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to M. J. Smith & Co., the agents for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

MARSHALL J. SMITH & CO., [L. S.]
Ag'ts for Ins. Co. N. Am., Phil.
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, says that he resides in this city and is worth the sum of $38.00 over and above all his just debts and liabilities.

C. KOHN.

Sworn to and subscribed before me this 25 day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

104 UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The British and Foreign Insurance Co., of Liverpool, England, by Pim, Forward & Co., agents, of New Orleans, claimant and forty-six bales of cotton, as principal, and B. D. Wood as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of sixteen hundred and ten dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, and R. A. Stewart and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district
105 of Louisiana, at the suits of the New Harbor Protection Co., W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 46 bales of cotton formed a portion, which has been seized accordingly, but has been released from

said seizure and delivered to Pim, Forward & Co., the agents of the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory and final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

For The Brit. & Foreign Marine Ins. Co., limited.

pp. PIM, FORWARD & Co, *Agents.* [L. S.]
ARTHUR J. MITCHELL. [L. S.]
B. D. WOOD. [L. S.]

106 B. D. Wood, surety on the within bond, being duly sworn, says that he resides in this city and is worth the sum of $1,610 over and above all his just debts and liabilities.

B. D. WOOD,

Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Factors and Traders' Ins'ce Co., of New Orleans, by E. A. Palfrey, president, of New Orleans, claimant and owner of four bales of cotton, as principal, and Thos. D. Miller and Jno. Phelps as sureties, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of one hundred and fifty dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervenors and W. H. Ellis, master, and R. D. Stewart and Jno. Stewart,
107 heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of the New Harbor Protection Co. and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the four bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to E. A. Palfrey, the president of The Factors and Traders' Ins. Co., owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimants having obtained leave of the court to bond said property, and filed a claim thereto, which is now of record
108 in the clerk's office of this court.

Now, the condition of the above obligation is such that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and *and* pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

FACTORS & TRADERS' INS. CO.,
By E. A. PALFREY, *Pres't.* [L. S.]
THOS. D. MILLER. [L. S.]
JOHN PHELPS. [L. S.]

Thos. D. Miller and Jno. Phelps, sureties on the within bond, being duly sworn, say that reside in this city, and are worth the sum of $152 over and above all their just debts and liabilities.

THOS. D. MILLER.
JNO. PHELPS.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

109 UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents, that we, The British & Foreign Marine Insurance Co., of Liverpool, England, by Pim, Forward & Co., of New Orleans, claimant and owner of forty-nine bales of cotton as principal, and B. D. Wood as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein, in the sum of eighteen hundred and sixty-two dollars, lawful money of the United States of America, for the payment whereof to the said New Harbor Protection Co., libellants and intervening libellants, W. H. Ellis, master, &c., and R. A. Stewart and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 26th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the hon-
110 orable the district court of the United States of America, for the district of Louisiana, at the suits of New Harbor Protection Co., & W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 49 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure, and delivered to Pim, Forward & Co., the agents for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate

court, then the foregoing obligation is to be void, but otherwise
111 shall remain in full force and virtue.

For the Brit. & Foreign Marine Ins. Co., limited.

pp. PIM, FORWARD & CO. [L. S.]
ARTHUR J. MITCHELL. [L. S.]
B. D. WOOD. [L. S.]

B. D. Wood, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $1,862 over and above all his just debts and liabilities.

B. D. WOOD.

Sworn to and subscribed before me this 26th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents, that we, The Factors and Traders' Ins'ce Co., by E. A. Palfrey, president, of New Orleans, claimant and owner of 61 bales and a crate of cotton, as principal, and Thos. D. Miller and Jno. Phelps, as sureties, are held and firmly bound unto the
112 libellants and intervening libellants that may recover herein, in the sum of twenty-two hundred and thirty-two dollars lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants, and W. H. Ellis, master, &c., R. A. Stewart and Jno. Stewart, heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America, for the district of Louisiana, at the suits of New Harbor Protection Co., and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229, on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 61 bales and a crate of cotton formed a portion which has
113 been seized accordingly, but has been released from said seizure and delivered to E. A. Palfrey, pres't. of the Factors and Traders' Ins. Co. owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay to the said libellants the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

FACTORS & TRADERS' INS. CO.
E. A. PALFREY, *Pres't.* [L. S.]
THOS. D. MILLER. [L. S.]
JNO. PHELPS. [L. S.]

John Phelps and Thos. D. Miller, sureties on the within bond, being duly sworn, say that they reside in this city, and are worth the sum of $2,232 over and above all just debts and liabilities.

JNO. PHELPS.
TH'S. D. MILLER.

114 Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Atlantic Mutual Insurance Co., of New York City, by James A. Whitlock, their agent, of New York City, claimant and owner of 54 bales of cotton, as principal, and C. Kohn as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of eighteen hundred and ninety dollars lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, R. A. Stewart and J. Stewart, their heirs, executors, administrators or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

115 Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co., W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 54 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to J. A. Whitlock, the agent for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final,

116 of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

ATLANTIC MUT. INS. CO.,
By JAS. A. WHITLOCK, [L. S.]
Special Agent.
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, say' that he resides in this city, and is worth the sum of $1,890 over and above all his just debts and liabilities.

C. KOHN.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Insurance Co. of North America, of Philadelphia, Penn., by Marshall J. Smith & Co.,
117 agents, of New Orleans, claimant of five bales of cotton, as principal, and C. Kohn, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of one hundred eighty dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants & W. H. Ellis, master, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which
118 the 5 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to M. J. Smith & Co., the agents for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

MARSHALL J. SMITH & CO., [L. S.]
Ag'ts Ins. Co. North Am., Phil.
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, and is worth the sum of $180 over and above all his just debts and liabilities.

C. KOHN.

119 Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The New Orleans Insurance

Association, by W. A. Bell, president, of New Orleans, claimant and owner of seven bales of cotton, as principal, and Wm. A. Bell, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of two hundred and sixty-six dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the
120 honorable the district court of the United States of America for the district of Louisiana, at the suit, of New Harbor Protection Co. and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 7 bales of cotton form a portion, which has been seized accordingly, but has been released from said seizure and delivered to W. A. Bell, the president of the N. O. Ins. Asso., owner thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such that if the said claimant and surety abide all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered by the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise in full force and virtue.

NEW ORLEANS INS. ASSO'N,
By W. A. BELL, [L. S.]
Pres't pro tem.

121 W. A. BELL, [L. S.]

W. A. Bell, surety on the within bond, being duly sworn, says that he resides in this city and is worth the sum of $266 over and above all his just debts and liabilities.

WM. A. BELL.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, the New Orleans Ins'ce Association, by Wm. A. Bell, president, of New Orleans, claimant and owner of 19 bales of cotton, as principal, and Wm. A. Bell, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of six hundred and eighty-four dollars, lawful money of the United States of America, for the payment whereof to the

said libellants and intervening libellants and W. H. Ellis, master,
122 R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H. Ellis et als. vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which said 19 bales formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to W. A. Bell, the president of the N. O. Ins. Asso'n, owner thereof, by reason of the signing, sealing, and delivery of these presents, said claimant
123 having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

NEW ORL'S INS'CE ASSO'N,
By W. A. BELL. [L. S.]
WM. A. BELL. [L. S.]

Wm. A. Bell, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $684 over and above all his just debts and liabilities.

WM. A. BELL.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

124 UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The British and Foreign Marine Ins'ce Company, of Liverpool, England, by Pim, Forward & Co., agents, of New Orleans, claimants and owners of 54 bales of cotton, as principal, and B. D. Wood, as surety, are held and firmly bound unto libellants and intervening libellants that may recover herein in the sum of nineteen hundred and forty-four dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and seventy-eight.

Whereas an admiralty warrant was lately issued out of the hon-
125 orable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H. Ellis et als. vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 of the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 54 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to Pim, Forward and Co., the agents for the thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

For The Brit. & Foreign Marine Ins. Co., limited.

pp. PIM, FORWARD & CO. [L. S.]
ARTHUR J. MITCHELL. [L. S.]
B. D. WOOD. [L. S.]

126 B. D. Wood, surety on the within bond, being duly sworn, says that he resides in this city and is worth the sum of $1,944 over and above all his just debts and liabilities.

B. D. WOOD.

Sworn to and subscribed before me this 25th day of April, A. D. 1878
J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Factors and Traders' Ins'ce Company, by E. A. Palfrey, president, of New Orleans, claimant and owner of 24 bales and 2 crates of cotton, as principal, and Thos. D. Miller and Jno. Phelps, as sureties, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of nine hundred and ten dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, &c., R. A. Stewart, and Jno. Stewart,
127 their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, A. D. 1878.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and

cargo, of which the 24 bales and 2 crates of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to E. A. Palfrey, the president of The Factors and Traders' Ins. Co., owner thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

128 Now, the condition of the above obligation is such, that if the said claimant and suret' abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise in full force and virtue.

FACTORS & TRADERS' INS'CE CO.
E. A. PALFREY, *Pres't.* [L. S.]
THOS. D. MILLER. [L. S.]
JOHN PHELPS. [L. S.]

John Phelps and Th's. D. Miller, sureties on the within bond, being duly sworn, say that they reside in this city, and are worth the sum of $910 over and above all their just debts and liabilities.

TH'S D. MILLER.
JOHN PHELPS.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

129 UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, Atlantic Mutual Ins'ce Co., of New York City, by Jas. A. Whitlock, special agent, of New York City, claimant and owner of 96 bales of cotton, as principal, and C. Kohn, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of thirty-six hundred and forty-eight dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants, and W. H. Ellis, master, R. A. Stewart and Jno. Stewart, their heirs, executors, administrators or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H.

130 Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 96 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure and delivered to J. A. Whitlock, the agent for the owner thereof, by reason of the signing, sealing, and delivery of these presents, said claimant hav-

ing obtained leave to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

ATLANTIC MUTUAL INS'C. CO.,
By JAS. A. WHITLOCK, [L. S.]
Special Agent.
C. KOHN. [L. S.]

131 C. Kohn, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $3,648 over and above all his just debts and liabilities.

C. KOHN.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, the Atlantic Mutual Ins'ce Company, of New York City, by Jas. A. Whitlock, special agent, of New York City, claimant and owner of 36 bales of cotton, as principal, and C. Kohn, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of twelve hundred and ninety-six dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants, and W. H. Ellis, master, R. A. Stewart and Jno. Stewart, their
132 heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 36 bales formed a portion, which has been seized accordingly, but has been released from seizure and delivered to J. A. Whitlock, the agent for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

133 Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the

final decree rendered in the court to which the process is returnable or in any appellate court, then this obligation is to be void, but otherwise shall remain in full force and virtue.

ATLANTIC MUT. INS. CO.,
By JAS. A. WHITLOCK, *Ag't.* [L. S.]
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $1,296 over and above all his just debts and liabilities.

C. KOHN.

Sworn to and subscribed before me, this 25th day of April, A. D. 1878.
J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents, that we The Phœnix Ins'ce
134 Company, of Brooklyn, New York, by M. I. Smith & Co., agents of New Orleans, claimant and owner of 2 bales of cotton as principal, and C. Kohn as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of seventy-two dollars, lawful money of the United States of America, for the payment whereof to the said libellants, and intervening libellants, and W. H. Ellis, master, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness, our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America, for the district of Louisiana, at the suit of New Harbor Protection Co., and M. H. Ellis, master, &c., vs. Ship Tornado, and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, command-
135 ing the marshal to seize and take into his possession the said ship and cargo, of which said 2 bales of cotton formed a portion, which has been seized accordingly, but has been released from said seizure, and delivered to M. I. Smith & Co., the agents for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then this obligation is to be void, but otherwise shall remain in full force and virtue.

MARSHALL J. SMITH & CO., [L. S.]
Ag'ts Phœnix Ins'ce Company, Brooklyn, N. Y.
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, says that he re-

sides in this city, and is worth the sum of $72 over and above all his just debts and liabilities.

136 C. KOHN.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, the Rhenish Westphalian Lloyds Marine Ins'ce Co., of M. Stadback, of Munchen Stadback, Germany, by S. A. Moritz, agent, of New Orleans, claimant and owner of 3 bales of cotton, as principal, and J. W. Buhrman, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of one hundred and eight dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants, W. H. Ellis, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals,
137 hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co., & W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 3 bales of cotton form a portion, which has been seized accordingly, but has been released from said seizure and delivered to S. A. Moritz, the agent for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree
138 rendered in the court the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

S. A. MORITZ, [L. S.]
Ag't Rhenish Westphalian Lloyd.
J. W. BUHRMAN. [L. S.]

J. W. Buhrman, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $108 over and above all his just debts and liabilities.

I. W. BUHRMAN.

Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, the Rhenish Westphalian Lloyds Marine Ins'ce Co., of Gladback, of Munchen Gladback, Germany, by S. A. Moritz, agent, of New Orleans, claimant and owner of 7 bales of cotton, as principal, and J. W. Buhrman, as surety, are held and firmly
139 bound unto the libellants and intervening libellants that may recover herein, in the sum of two hundred and sixty-six dollars, lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, master, R. A. Stewart and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 25th day of April, one thousand eight hundred and 78.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co., and W. H. Ellis, master, &c., vs. Ship Tornado & cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 7 bales of cotton form a portion, which has been seized accordingly, but has been re-
140 leased from said seizure and delivered to S. A. Monitz, the agent for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligrtion is to be void, but otherwise shall remain in full force and virtue.

S. A. MORITZ, [L. S.]
Ag't Rhenish Westphalian Lloyd.
J. W. BUHRMAN, [L. S.]

J. W. Buhrman, surety on the within bond, being duly sworn, says that he resides in this city, and is worth the sum of $266 over and above all his just debts and liabilities.

J. W. BUHRMAN.

141 Sworn to and subscribed before me this 25th day of April, A. D. 1878.

J. DEVONSHIRE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, The Atlantic Mutual Ins'ce Co., by Jas. A. Whitlock, agent, of New York, claimant and owner of

23 bales of cotton, as principal, and C. Kohn, as surety, are held and firmly bound unto the libellants and intervening libellants that may recover herein in the sum of eight hundred and seventy-four dollars lawful money of the United States of America, for the payment whereof to the said libellants and intervening libellants and W. H. Ellis, R. A. Stewart, and Jno. Stewart, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, administrators, firmly by these presents. Witness our respective names and seals, hereunto affixed by us at New Orleans this 29th day of April, one thousand eight hundred and 78.

142 Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suits of New Harbor Protection Co. and W. H. Ellis, master, &c., vs. Ship Tornado and cargo, her tackle, apparel, and furniture, and numbered 11207 and 11229 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship and cargo, of which the 23 bales of cotton form a portion, which has been seized accordingly, but has been released from said seizure and delivered to Jas. A. Whitlock, the agent for the owners thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court.

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

143 ATLANTIC MUT. INS. CO.,
By JAS. A. WHITLOCK, [L. S.]
Special Agent.
C. KOHN. [L. S.]

C. Kohn, surety on the within bond, being duly sworn, says, that reside' in this city, and worth the sum of $874 over and above all just debts and liabilities.

C. KOHN.

This bond accepted.

THOS. J. SEMMES & R. DEGRAY,
Proctors.

APRIL 29, '78.

Order allowing the bonding of the vessel and such of the cotton as is in good condition and stored, and to sell remainder, &c., and order appointing W. C. Black trinity master, March 6th, 1878.

NEW HARBOR PROTECTION CO. }
vs. } 11207.
SHIP TORNADO & CARGO. }

On due consideration of the law and the evidence, and the argument of counsel with reference to the motion to rescind the order of sale
144 and allow the claimant to bond vessel and cargo,

It is ordered by the court that the claimant be allowed to bond the vessel and such of the cotton as is now stored at the Levee Steam Cotton Press, and which is in good order, and that the remainder of the cargo on board ship, or upon the levee, which is more or less damaged, be sold by the marshal after 3 days advertisement, and the proceeds deposited according to law; all questions as to freight being reserved.

It is further ordered that an appraisement of the vessel and of the whole cargo, whether in the press, on board ship, or on the levee, be made by W. C. Black, esq., the desire of the court being that said appraiser would act as a trinity master, assist the marshal in assorting the cargo, and give him all advice and the benefit of his long experience in matters of this kind, with a view of securing a sale that would enure to the best advantage of all concerned.

145 *Letter from trinity master.—Filed March* 7, 1878.

NEW ORLEANS, 7 *March*, 1878.

His honor, Judge Billings, U. S. district court:

After making a thorough examination of the cargo of the ship Tornado and the limited space she has in which to discharge cargo, I am clearly of the opinion that no sales can be made on the levee to advantage.

As far as I have been able to see, some bales are much more damaged than others, and as there is no levee room to assort cargo, and cannot be had even by removal of vessel, it is in my judgement absolutely necessary that the entire cargo be removed to a press yard, where it can be assorted and the bales in good condition sold by themselves and those in bad condition by themselves. This course will in my opinion greatly enure to the benefit of all parties interested. Col. Denis will, remove the cotton from the landing as well as cargo as fast as landed to his press incurring all expenses attending, make proper separations in lots of 100 bales each, for
146 the sum of 85 cts. per bale. This course I recommend to the court.

Respectfully,

W. C. BLACK,
Trinity Master.

Order of court on above letter.—March 7, 1878.

Ordered that the communication from the trinity master be placed on file, and that his recommendation to remove the entire cargo from the landing to a press yard be carried out by the marshal.

Order amending order of 6th March.—March 7, 1878.

Ordered that the order entered on 6th instant be so modified as to direct that the funds received from day to day from the sale of the cargo be deposited in the registry of the court as received.

Letter from trinity master.—March 11, 1878.

NEW ORL'S, 11 *March*, 1878.

147 To the honorable Judge Billings, U. S. district court.

SIR: I have carefully examined as far as discharged, comprising

about ⅔ds of the cargo of the ship Tornado, the condition of the cotton landed from said vessel, and find that it is all damaged (and have no reason to suppose that the unlanded portion of the cargo will at all affect my appraisement), some by fire and water, and some by water only; a proper separation has been made by the marshal, so that the cotton damaged by fire and water is to itself and that damaged by water to itself. This has been done with the view to facilitate the sale of the cotton and make each lot sell for its appropriate value.

The cotton damaged by fire and water I appraise at $24 per bale; that by water alone at $28 per bale. There being considerable loose cotton, I recommend that it be sold at so much per pound, and to this end appraise it to be worth three cents per pound. No allowance to be made for absorption of water.

Resp'y,

W. C. BLACK,
Trinity Master.

148 *Order of court on above.—March* 11, 1878.

Agreeably with Mr. Black's recommendation it is ordered that all the loose cotton of the cargo of the ship Tornado be sold per pound weight, and that the marshal be notified. This modification is not in any wise to delay the sale heretofore ordered.

Modification of order of sale of loose cotton.—March 19, 1878.

Let the orders herein made be modified by substituting as follows: That the loose cotton be sold either in bulk or by the pound, in whole or in part, as in the judgment of Mr. Black may be calculated to produce the highest price.

Report of trinity master.—Filed 19 *March*, 1878.

NEW ORLEANS, 19 *March*, 1878.

The honorable E. C. Billings, judge U. S. D. court:

149 I beg leave to report the following appraisement of cotton, part of the cargo ship Tornado, now at the Levee Steam Cotton Press, 764 bales (said to have been on board of said ship at time of accident), @ $38 per bale; 153 bales and 2 crates, in all 155 bales, slightly damaged, @ $35 per bale; 180 bales, including one crate, @ $36 per bale.

M. C. BLACK,
Trinity Master.

Appraisement of vessel.—Filed March 19, 1878.

NEW ORLEANS, 19 *March*, 1878.

The honorable E. C. Billings, judge U. S. D. court:

After a careful examination of the ship Tornado, I find that she is so much damaged by fire and other causes as to lose her value entirely for sea-going purposes, and therefore can fix no higher valuation for an appraisement than $7,000.

WM. C. BLACK,
Trinity Master.

150 *Order to release vessel on a bond for* $5,000 *to Ellis et als.—March* 21, 1878.

On motion of Thos. J. Semmes & Grover & Harding, proctors for Ellis, master and claimant of the ship Tornado, tackle, apparel, and furniture, it is ordered that said ship be released from seizure and delivered to said claimant on his giving bond in the sum of $5,000, with Carl Kohn as surety.

Rule and order on the marshal not to sell 500 *bales cotton.—March* 21, 1878.

11207. On motion of J. McConnell, proctor for the Atlantic Mut. Ins. Co. of New York, the Factors' and Traders' Ins. Co., of New Orleans, and others, claimants named in the claim herein filed on 19th March, 1878; and on suggesting that the whole of the cargo of said ship Tornado has been sold by the marshal, except the 500 bales which the cap-
151 tain, as lawful bailee, was authorized to bond, but which your present claimants now claim the right to bond instead of the said captain, as per said claim filed herein on the 19th instant, and the order of court allowed thereon of said date; and on further suggesting that the marshal has advertised the said remaining 500 bales in error and without authority to be sold on Friday, the 22d instant, at 12 o'clock,

It is ordered by the court that Jack Wharton, esq., marshal, do show cause instanter why he should not discontinue the said advertisement, and that he be ordered not to proceed further with the sale of said 500 bales of cotton.

And service having been accepted, and the rule submitted without any objection on the part of the marshal,

Ordered that the rule be made absolute, said advertisement discontinued, and the marshal directed not to proceed further with the sale of said 500 bales of cotton.

Order to sell staves.—March 23, 1878.

152 11207. On motion of Hornor & Benedict it is ordered that the marshal sell the staves on board ship Tornado after five days' advertisement, and deposit the proceeds according to law.

Report of trinity master.—Filed March 25, 1878.

To the Hon. E. C. Billings, judge U. S. dist. court, La.:

SIR: I beg leave to call the attention of your hon. court to my action in the case of New Harbor Protection Co. vs Br. Ship Tornado.

Immediately upon receiving my appointment of trinity master in the above case I repaired to the ship Tornado to carry out the duties assigned to me by the order of your hon. court, and after surveying the situation of things at the vessel found it necessary to remove the cargo to a suitable place for proper examination and arrangement, so as to place it in its most favorable light, and thereby secure in its sale its full market
153 value. Upon my recommendation your honorable court authorized the removal of cargo to the Steam Levee Cotton Press at a cost of 85 cents per bale. The removal was accomplished without unnecessary

delay, and the wisdom of this measure was fully sustained in the enhanced prices obtained at the sale subsequently made, being largely in excess of any sale that could have been made at the ship's side.

SALE OF DAMAGED COTTON.

4,672 bales, aggregating the sum of..... $116,032 50

This sum you will doubtless find in the custody of your honorable court at this time.

SOUND COTTON.

500 bales at the levee steam cotton-press, appraised by me for bonding, aggregating about the sum of..... $18,000

SHIP TORNADO.

Upon examination found the ship to have no value for sea-going purposes, but for other purposes worth..... $7,000

Respectfully,

WM. C. BLACK,
Trinity Master.

NEW ORLEANS, *March* 23, 1878.

154 *Rule to bond proceeds.—Filed May* 1, 1878.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, & FREIGHT. } 11207.

W. H. ELLIS, MASTER, ET AL.
vs.
CARGO OF SHIP TORNADO. } 11229.

On motion of J. McConnell, proctor for the Atlantic Mutual Ins. Co., of New York, The Factors and Traders' Ins. Co., of New Orleans, and others, underwriters and claimants and now owners of the entire cargo of cotton as per claim filed herein on the 19th day of March, 1878, to which reference is made for brevity as part hereof; and on suggesting to the court that of the property libelled herein 500 bales were bonded by these appearers at their appraised value for $18,173; amount received by the U. S. marshal from sales of cotton herein was $116,032.50=134, 205.50; 23 bales seized in suit 11229 bonded for 874=$135,079.50; appraised value of ship, 7,000.00; and further suggesting that said pro-
155 ceeds have been realized from sales made under an order obtained by the salvors herein; that at the date of the seizure herein and of the sales by the marshal these appearers had not received the bills of lading of the cargo of said cotton and were in consequence unable to claim and bond the same; that it was not until after said bales, to wit, on the 19th of March, 1878, that they were able to

make their claim herein and make application to bond, as they did, the portion of the cargo then remaining unsold, consisting of 523 bales, in two lots, and for which they have now given bond; that under these circumstances your claimants are entitled of right and under the rules and practice in admiralty to invoke, as they now do, the discretionary power of this hon. court to name and adjudge a reasonable sum of the proceeds in the registry, as shall, with the bonds already given, be and constitute full security to satisfy *in* decree, and abide in the registry, to pay the money awarded by the final decree rendered by this court, or the appellate
156 court, if an appeal intervenes, and that the rest and residue of the proceeds of said sales of said cargo of cotton may be ordered to be paid over forthwith to these claimants, who were the underwriters and are now the substituted and sole owners of said cargo of cotton and the proceeds of the sales thereof, as more fully alleged in the said claim, and also in the answer filed herein, which several papers are referred to for brevity as part hereof: It is ordered by the court that the libellants and all intervening libellants herein do show cause on Monday, the 6th day of May, 1878, at 11 o'clock a. m., why a reasonable sum in the registry should not, together with the bonds already given, in such amount as shall, in the judgment of the court, be full security to pay and satisfy the money awarded by the final decree rendered by this court or the appellate court, *should not* be set aside and remain for that purpose, and why the rest and residue of the proceeds of said cargo should not be paid over forthwith to
157 these claimants, or be permitted to bond the same.

Answer to rule to bond proceeds.—Filed May 6th, 1878.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, & FREIGHT. } 11207.

W. H. ELLIS, MASTER, AND OTHERS
vs
CARGO OF SHIP TORNADO. } 11229.

And now come W. H. Ellis, master, and others, libellants in suit No. 11229, and for answer to the rule herein taken, asking that the proceeds of the sale of cargo, &c., be turned over to the insurance co's, claimants of cargo, or that they be permitted to bond the same, say that they deny the allegations in said rule set forth, that said sales of cargo were made at the instance and request of salvors alone, but aver and show that in the first instance an ex parte order was granted, on the motion of the
158 New Harbor Protection Co., for the sale of the cargo of said ship by the marshal as it came out of the vessel on the wharf, and that thereupon a rule was taken to set aside said ex parte order for sale as aforesaid, and an application was made by the master of said vessel to bond the same, and that thereupon the New Harbor Protection Company and representatives of each and every underwriter on the entire amount of said cargo appeared and were examined as witnesses on the trial of said rule, and said application to bond by the said master, and each and every one of said underwriters on said cargo testified that it was their wish and desire that said cotton should be sold by the marshal of this hon. court as it

came out of the ship, and that they were opposed to the said master bonding the same; and that in said examination of witnesses and on the hearing of said rule said underwriters were represented by counsel, who in said underwriters' interest argued against and opposed the bonding of said cargo by said master.

159 Further answering, respondents say they have a lien for their freight and disbursements on the whole of the proceeds of said cargo, which lien can only be discharged by the payment of the same, and that it is not within the power of this court to give up part of said proceeds, free of lien, and retain said lien on another part thereof, nor is it within the power of this court to allow claimants to bond money out of the registry.

Wherefore respondents pray that said rule be dismissed at movers' cost.

(Sig.) R. DE GRAY.
" TH'S J. SEMMES.

Exception to the answer of Ellis and others.—Filed May 6th, 1878. Nos. 11207 & 11229.

The Atlantic Mutual Ins. Co., of New York, and others, movers in the rule herein taken to obtain release of certain proceeds of the cargo of cotton in the registry of the court, now come and except to the

160 answer filed by W. H. Ellis and others, in writing, to the said rule, and for cause of exception thereto, say:

That said answer presents matter entirely irrelevant to the said rule, and seeks by irrelevant averments to precipitate the trial of the case upon its merits.

That the merits of the case cannot thus be presented in an answer to said rule, nor can the relief sought for by said rule be thus prejudiced by the matters in said answer pertaining to the merits.

Wherefore they pray that this exception be maintained, and that all matters in the said answer of said irrelevant character and pertaining to the merits of the cause be rejected and stricken from said answer and from the consideration of this court upon the hearing and trial of said rule, and that the prayer of said rule and motion be allowed, and for gen'l relief.

J. McCONNELL, *Proctor*.

161 *Hearing & submission of rule, May 6, 1878.*

NEW HARBOR PROTECTION CO. *vs.* SHIP TORNADO, CARGO, &C. } 11207.

W. H. ELLIS, MASTER, &C. *vs.* CARGO SHIP TORNADO. } 11229.

The rule taken on 1st instant came on for trial.

Present, J. McConnell, Th's J. Semmes, R. De Gray, Hernor & Benedict, Egan, J. W. Gurley, jr., P. P. Carroll, M. M. Cohen.

And after hearing argument the court took time to consider.

Order on rule, May 9, 1878.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, &C. } 11207.

W. H. ELLIS, MASTER, &C.
vs.
CARGO OF SHIP TORNADO. } 11229.

162 Ordered, that upon the movers in the rule of 1st May, 1878, furnishing separate bonds with sureties, to be justified according to the rules of the court, in favor of each of the intervenors and libellants, others than those claiming salvage, in an amount exceeding by one-fourth the amount claimed by each, the sum of $50,000 (fifty thousand dollars) of the fund in the registry be paid over to the said movers as claimants, and owners of the entire cargo, the balance of the proceeds to remain in the registry to answer the costs and any judgment in favor of those claiming to be salvors herein.

Amendment of preceding order, May 11, 1878.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } 11207.

W. H. ELLIS, MASTER, &C.
vs.
CARGO SHIP TORNADO. } 11229.

Ordered that the order made on 9th instant and that the following ing entry:

163 Ordered that upon the claimants, movers in the rule of 1st May, 1878, filing bond in favor of W. H. Ellis, master, and the owners of the ship Tornado for freight and advances, in an amount exceeding by ¼th the amount claimed, with surety to be justified according to the rules of this court, the said claimants and movers shall have leave to withdraw from the fund in the registry the sum of ($50,000) fifty thousand dollars, the balance of the fund in the registry to remain to satisfy costs and claims of all other libellants and intervenors.

DECEMBER 7TH, 1878.

Default against ship.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO. } 11207.

On motion of M. M. Cohen, proctor for libellants, and on showing to the court the libel was filed on the 27th day of February, 1878, and that the defendants, claimants of the said ship and freight, have omitted

164 or refused to make due answer upon the return day of the process, and since, it is ordered that they be pronounced in contumacy and

default, and the libel be adjudged to be taken pro confesso against them.

Hearing and submission, February 1st, 1879.

NEW HARBOR PROTECTION CO. *vs.* SHIP TORNADO AND CARGO. } 11207.

W. H. ELLIS, MASTER, &C., *vs.* CARGO SHIP TORNADO. } 11229.

The trial of this cause was this day resumed, and after hearing the closing argument of Th's J. Semmes, esq., the court took time to consider; with leave to counsel to submit briefs.

Decree and order of reference and dismissal of libel for freight.—February 18th, 1879.

NEW HARBOR PROTECTION CO. *vs.* SHIP TORNADO & CARGO } 11207.

165 W. H. ELLIS, MASTER, ET AL., *vs.* CARGO SHIP TORNADO. } 11229.

This cause came on to be heard at the last term of the court and was argued by counsel; and thereupon on consideration thereof, the court finds that this is a case of salvage of a low grade.

It is therefore ordered, adjudged, and decreed that the parties hereinafter named be allowed for their services, and paid from the fund in court, with costs of suit, as follows, viz:

1st. Tug Protector the sum of..... $7,500 00

Out of this sum the owners of the tug will retain $2,404.57 for their expenses, and the balance of $5,095.43 will be divided between the owners and the crew as follows: ¾ths to the owners of the protector, and ¼ to the crew, to be distributed among said crew according to pay-roll.

CONTRACT BOATS.

2. Tug Norman..... $800 00
3. Tug Harry Wright..... 1,000 00
4. Tug Rio Grande..... 1,000 00

166 One-half of the amount allowed to said tugs Norman, Harry Wright, & Rio Grande is the share of the owners, the other half the share of the crews, to be distributed in manner above specified.

5. Tug Aspinwall $1,000 00
6. " Charley Wood..... 750 00
7. " Belle Darlington 500 00
8. " Continental 350 00
9. " N. M. Jones..... 350 00

10. " Ida 250 00
11. " Wasp 100 00
12. " Fearn 100 00
13. " Ella Wood 250 00
14. " J. Cooper, jr 100 00
15. Geo. Canby 500 00
and to be reimbursed all his expenses.
16. B. D. Wood 450 00
and to be reimbursed all his expenses.
17. N. Theodore & Francis, $150 each 300 00
and to be reimbursed all their expenses.
18. Drysdale & Son 150 00
& to be reimbursed all their expenses.
19. The laborers, With, Rogers, Dower, Byrne, Savard,
167 Weichman, Raynor, Keveney, J. Smith, & F. Laguay,
each $10 ..... $100 00
in addition to what they have already been paid.
20. Henry Ellerman 102 72
" " damages ag'st ship 250
$352 72
21. W. A. D. Anderson 318 30
22. Geo. Glidden 920 40
23. Thos. O'Connor and value of hose lost 250 00
24. Jas. Boyce, ass't to O'Connor 50 00
M. Ray, ass't to O'Connor 50 00
25. Owners of engines at the rate of from $10 to $15 per hour for time actually employed while raising ship, according to power & work done.
26. The firemen, $5 each per day, for actual services rendered in raising ship.
27. James Moore for stopping holes below 50 00
28. Wm. Gleason hired to run engine in order to raise the cotton out of the hold of the vessel 300 00

It is further ordered that the claim of the N. O. Night-Watchmen Co. be rejected, the same not being a maritime lien. And it is referred to Jno. Devonshire, commissioner, to prepare and submit a tableau of
168 distribution in accordance with the foregoing decree.

And it further ordered, adjudged, and decreed that the libel for freight of Wm. H. Ellis, master, and others be, and the same is hereby, dismissed with costs.

Order amending decree.—February 19, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } 11207.

WM. H. ELLIS, MASTER, &C.,
vs.
CARGO SHIP TORNADO. } 11229.

On motion of E. D. Craig, esq., it is ordered by the court that the de-

cree of the 18th instant be so amended as to allow each of the intervenors, Emile Laine, Jno. Lyons, Wm. McFord, Geo. Goetz, and Jno. Roberts $10 for their services; in all, $50.

Amendment of decree.—February 19th, 1879.

169 NEW HARBOR PROTECTION CO. vs. SHIP TORNADO, ETC. } 11207.

W. H. ELLIS, MASTER, &C. vs. CARGO SHIP TORNADO. } 11229.

Ordered that the decree entered on 18th instant be so modified as to direct that of the several amounts awarded to the tugs Aspinwall, Charley Wood, Belle Darlington, Continental, N. M. Jones, Iola, Wasp, Fearn, Ella Wood No. 2, and J. Cooper, jr., one-half shall be the share of the owners of the tugs, the other half that of the crews, to be distributed among them in the usual method.

Order increasing the allowance to the Norman to $1,000.—*March* 7, 1879.

11207.] THE TORNADO.

Upon due consideration of the rehearing applied for on behalf of the tug Norman, it is ordered by the court that the amount awarded to said tug in the decree of the 18th February, 1879, be raised from $800 to $1,000.

170 *Report of Commissioner Devonshire and tableau of distribution.—Filed April* 16, 1879.

NEW HARBOR PROTECTION CO. vs. SHIP TORNADO & CARGO. } 11207.

This was a cause of salvage, and the vessel and cargo was libelled on the 28th day of February, 1878. At the instance of the New Harbor Protection Company, the vessel was seized and taken into the possession of this hon. court by the U. S. marshal by virtue of an admiralty warrant issued upon said libel.

On the 6th March, 1878, an order was entered by this hon. court to bond the vessel and part of the cargo and to sell the balance.

On the 30th March, 1878, W. H. Ellis, master of the Tornado, and others, filed a separate libel for freight, &c., which proceedings were entitled "W. H. Ellis, master, &c., et als., versus Cargo of Ship Tornado," and numbered 11229 on the docket of this court. These proceed-
171 ings were by order of this honorable court, on the 15th April, 1878, consolidated with the salvage suit.

Numerous parties claiming salvage and compensation in the nature of salvage filed their libels of interventions.

Testimony on the libel for salvage and interventions, as well as upon the libel for freight, &c., by Ellis, and consolidated as aforesaid, was taken, aggregating to very nearly 5,000 pages.

The hearing of this cause began on the 14th January, 1879, and the hearing was continued from day to day till the 1st day of February, 1879, when the cause was taken under advisement by this hon. court, and on the 18th day of same month and year a decree was entered making allowance for salvage and compensation in the nature of salvage and dismissing the libel of W. H. Ellis, master, &c., versus Cargo of Ship Tornado.

On the 19th February, 1879, an order was entered by this hon. court, suspending the final'ty of that portion of the decree dismissing the libel of W. H. Ellis for freight, &c., until the coming in of the report of the commissioner, to whom the whole matter as to salvage, &c., was
172 referred for a report, and for the making of a tableau of distribution in accordance with the principles laid down in the decree.

On the same day an order was entered by this hon'ble court, modifying the original decree as to E. Laine and four others.

Rules for rehearing were taken by some of the intervening libellants and refused with the exception of the one taken on behalf of the tug Norman, the original decree being amended in this instance by increasing its allowance for services to $1,000.

Under the order of this hon'ble court directing the marshal to pay over from day to day the proceeds of the sale of the cargo there was paid over to the registrar of this court the sum of $65,000 on the 13th March, 1878, and the sum of $36,000 on the 21' March, 1878, and the sum of $2,671.88 on the 3d January, 1879, making a total of $103,671.88 so paid over. From this amount was paid the sum of $2,500 to James McConnell, esq., counsel for claimants, of fund in registry and part payments to clerk, and to H. Langford, stenographer, on % of their costs.

173 The following is a copy of the decree as originally rendered and subsequently amended as hereinabove set forth.

This cause came on to be heard at the last term of the court, and was argued by counsel, and thereupon, on consideration thereof, the court finds that this is a case of salvage of low grade.

It is therefore ordered, adjudged, and decreed that the parties hereinafter named be allowed for their services and paid from the fund in court, with costs of suit, as follows, viz:

1. Tug Protector the sum of..... $7,500

Out of this sum the owners of the tug will retain $2,404.57 for their expenses, and the balance, $5,095.43, will be divided between the owners and the crew as follows: ¾ths to the owners of the Protector and ¼ to the crew, to be distributed among said crew according to pay-roll.

CONTRACT BOATS.

2. Tug Norman..... 800
3. Tug Harry Wright..... 1,000
4. Tug Rio Grande..... 1,000

One-half of the amount allowed to said tugs Nor-
174 man, Harry Wright, and Rio Grande to be the share of the owners; the other half the share of the crews, to be distributed among said crews in manner above specified.

5.	Tug Aspinwall	1,000
6.	" Belle Darlington	500
7.	" Charlie Wood	750
8.	" Continental	350
9.	" N. M. Jones	350
10.	" Ida	250
11.	" Wasp	100
12.	" Fearn	100
13.	" Ella Wood No. 2	250
14.	" J. Cooper, jr	100

The decree above entered be so modified that of the amounts awarded to the tugs Aspinwall, Charlie Wood, Belle Darlington, Continental, N. M. Jones, Ida, Wasp, Fearn, Ella Wood No. 2, J. Cooper, jr., one-half shall be the share of the owners of the tugs; the other half that of the crews, to be distributed among them in the usual method.

15.	Geo. Canby (and to be reimbursed all his expenses)		500
18.	Drysdale & Son (& to be reimbursed all their expenses)		150
19.	The laborers, With, Rogers, Dower, Byrne, Savard, Weichman, Raynor, Keveney, J. Smith, & F. Laguay,		
175	each $10 (in addition to what they have already been paid)		100
20.	Henry Ellerman	102 72	
	" " damages agst. ship	250	
			352 72
21.	W. A. D. Anderson		318 30
22.	Geo. Glidden		920 40
23.	Th's O'Connor, and value of hose lost		250
24.	J. Boyce, ass't to O'C		50
	M. Ray " " "		50
25.	Owners of engines at the rate from $10 to $15 per hour, for time actually employed while raising ship according to power & work done.		
26.	The fireman $5 each per day for actual services in raising ship.		
27.	James Moore for stopping holes below		50
28.	Wm. Gleason hired to run engine in order to raise the cotton out of the hold of the vessel		300

It is further ordered and decreed that the claim of the N. O. Night-Watchmen Co. be rejected, the same not being a maritime lien, and it is referred to J. Devonshire, commissioner, to prepare and submit a tableau of distribution in accordance with the foregoing decree.

And it is further ordered, adjudged, and decreed that the libel for freight of W. H. Ellis, master, and others, be, and the same is hereby, dis-
176 missed.

On the 19th February, 1879, this hon. court entered the following order:

On motion of Thos. J. Semmes, esq., proctor for W. H. Ellis, master, et al.

It is ordered by the court that the decree herein entered on 18th instant, dismissing the libel for freight, be suspended until the commissioner shall have filed his report and a final decree is rendered in this cause.

On the same day the following order was entered:

On motion of E. D. Craig, esq., it is ordered by the court that the decree of the 18th instant be so amended as to allow each of the intervenors, Emile Laine, Jno. Lyons, Wm. McFord, Geo. Goetz, and Jno. Roberts $10 for their services, in all, $50.

And on the 7th day of March, 1877, the following order was entered:

On due consideration of the rehearing applied for on behalf of the tug Norman, it is ordered by the court that the amount awarded said tug in the decree of the 18th February, 1879, be raised from $800 to $1,000.

On the 28th of February, 1879, a rule was taken by Chs. S. Rice,
177 of counsel for E. Blessey, to show cause why the sum of $397.50 should not be awarded and paid as costs.

On the 3d day of March, 1879, this hon. court ordered that the matter be referred for examination and report.

An examination of the evidence as to disbursements of George Canby shows that the sum of $1,587 was disbursed by him for the taking out and saving of cotton.

An examination of the evidence as to disbursements by B. D. Wood shows that the sum of $672 was expended by him in payment of labor, &c.

N. Theodore and M. W. Francis. An examination of the evidence in this matter shows that all the disbursements were made by Theodore, with the exception of $14 paid to J. Crellin and the sum of $20 for oakum used to stop holes, and that the amount disbursed by Theodore is $208.

Drysdale & Sons. John Drysdale, one of the members of above firm, states that the sum of $827.50 was disbursed by said firm.

As to the claim of Thomas O'Connor he was allowed by the de-
178 cree the sum of $250, as personal compensation and the value of hose lost, which, according to his libel of intervention, amounts to the sum of $235. He has included in his bill certain disbursements for axes, crowbars, and extra labor in the aggregate sum of $158.50, but as the decree limits me as to the value of the hose I cannot report as to the latter items, and therefore submit them to the consideration of the court.

As to the claims of the different fire companies, the executive officers of the following-named companies have presented bills for services hereinunder enumerated, upon which evidence has been taken.

Volunteer No. 1 in the sum of $1,087.50, as follows: Service pumping out 56 hours, @ $15=$480, and the balance of the above amount being made up by labor of firemen in attendance upon the engine while pumping out, @ $5 per man.

Washington, 20, in the sum of $1,015, as follows: 56 hours' pumping out, $480, and the balance of amount as above.

179 Vigilant, No. 3, in the sum of $1,630, as follows: 84 hours' pumping out, $1,260, and the balance of amount as above.

Perseverance steam engine, No. 13, in the sum of $1,540, as follows: 84 hours' pumping out, $1,260, and the balance of amount as above.

Jackson, No. 18, in the sum of $1,440, as follows: 70 hours' pumping out, $1,050, and the balance of amount as above.

Creole, No. 9, in the sum of $1,410, as follows: 80 hours' pumping out, $1,200, and the balance of amount as above.

Crescent, No. 24, in the sum of $1,725, as follows: pumping out 90 hours, '1,350, and balance of amount as above.

Phœnix, No. 8, in the sum of $1,100, as follows: 60 hours' pumping out, $900, and balance of amount as above.

Louisiana Hose Co., in the sum of $1,440, as follows: 70 hours' pumping out, $1,050, and balance of amount, as above, for labor of firemen.

Philadelphia, No. 14, in the sum of $1,110, as follows: 62 hours' pumping out, $930, and balance of amount as above for labor of firemen.

Mississippi, No. 2, in the sum of $1,165, as follows: 64 hours'
180 pumping out, $960, and balance of amount, as above, for labor as firemen.

Mechanics, No. 6, in the sum of $1,500: 72 hours' pumping out, $1,080, and balance of amount as above for labor of firemen.

The charges in these bills for pumping out are predicated upon the basis of $15 per hour, there being, according to the evidence, no material difference in the working power or capacity of the pumps of the respective engines.

The charges for labor are for the attendance of firemen on the engines in attending to hose and suction, and the charges vary from 4 to 12 men in attendance.

These charges for pumping out as rendered by the different companies extend till the 12' March, 1878.

The representatives of the different engines show by their evidence that they continued pumping while there was water in the vessel; that they were tanks in the vessel filled with water, and that owing to the charred condition of the decks supporting these tanks it was necessary, in
181 order to discharge the cargo, that they should be pumped out.

That the drippings from the cotton as it was raised for the purpose of being discharged, also rendered necessary the continuous pumping for the period charged.

Counsel for claimants contend that this hon. court, by its preliminary decree, limited by implication the time within which compensation for these services were to be allowed, viz, until the raising of the vessel, on the 28th day of February, 1878; they further contend that those engines charging for the labor of firemen in attendanee are excessive and more than necessary.

The evidence on this point shows that the employment of firemen in attendance varied from 4 to 12 men.

The chief engineer of the department, as well as the executive officers of the different companies, testify that the number of men employed by the respective companies was actually necessary.

The decree allows from $10 to $15 per hour for time actually employed in pumping out while raising the ship. If the construction
182 put upon the decree by claimants is correct I will be constrained, from the want of evidence tending to show the actual number of

hours employed by the different engines in raising the ship within the period mentioned, and the seeming impossibility to arrive at any fair or just conclusions in this matter as to compensation per hour from the evidence on file, to refer the matter back to this hon. court for its action on the premises, or to report on the claims as proved, so that this hon. court may take whatever action may be deemed necessary on the proposition contended for; and, deeming the latter method the most just for both parties, will so report, thus giving claimants an opportunity to urge their proposition by exception to this report, and thus enable this hon. court to decide the matter as whether the compensation for pumping out is to end on the 28th February, 1878; and, if so, whether any and what compensation is to be allowed the engine companies for their services, as stated above, after that date, until the final discharging of the cargo of the vessel.

183 In addition to the claims for allowance to firemen in attendance upon the respective engines during the pumping out, was presented under this reference and testimony taken thereon, were the claims of John Evans and some 24 others, members of the Hope Hook and Ladder Co. No. 3, and E. Develle and 21 others, members of Pelican Hook & Ladder Co. No. 4; their respective companies not being fire engine companies, no allowance was made in the preliminary decree for any compensation to these companies or its members. The evidence shows that they did some work, but not to any great extent, in raising the ship, &c., and should be allowed such compensation as may be deemed adequate by this hon. court.

The next claim to be considered is that of Joseph Cooper for discharging 4,276 bales and 27 crates of cotton, and 2 & ½ thousand staves. He charges an average of $1.25 per bale and crate of cotton, and the sum of $25 for discharging the staves.

Evidence was adduced on behalf of Cooper to show that this charge was a reasonable one, and, on the other hand, that it was unreasonable,

184 and that the charges for unloading a cargo was much less than for loading, and reference was made in this evidence to the charge allowed in the Gov'r Morton case to same party at $1.00 per bale.

As regards the Gov. Morton and this case there is a material difference. In the Gov. Morton case, the greater part of the cargo was burnt, and a great portion was on fire whilst being discharged; so that from these facts as well as the evidence adduced compensation in this case should be fixed at a much lower rate.

The charge for unloading the staves is excessive, and it exceeds the price for which they were sold. I think he should be allowed $10 for unloading the staves, and a compensation of 70 cents per bale. Counting in the crates as bales, would make 4,303 bales; this would entitle him to $3,012.10 for discharging the cotton, and $10 for the staves, making a gross amount of $3,022.10.

In the tableau of distribution I have not made any provision as

185 to the marshal's costs and the claim of E. Blessey which is sought to be charged as costs, as they will be disposed of in a separate report by the clerk of this court as the only proper person to make such taxation.

As to the claim of Ellerman for wharfage in the sum of $102.72 and for damages to the wharf in the further sum of $250, I submit as equit-

able and just that as to the first item for wharfage, this is chargeable solely to the ship, and judgment for that amount as well as to the proportionate amount in the item of $250 should be rendered against the surety on the release bond for the vessel. It is but just that the cargo should pay its proportion of the damage to the wharf, because if the ship had not been laden the strain on the wharf would not have been so great.

As regards the claim of M. M. Cohen, esq., proctor for libellant, as to fees on depositions, I have allowed him not only fees taken on the depositions in the salvage, but also the fees on depositions taken on the question of freight, as these causes, by reason of the consolidation, were heard as one cause.

186 As to deposition fees in the salvage suit, he is not entitled to more than one fee where one and the same witness testifies at one sitting to different claims, but if this witness is called at another sitting to give his testimony again I think him entitle' to separate fee, and so report total amount depositions 196.

The sales of cotton and the staves, as shown by statement of the U. S. marshal, is $116,245.25, the value of the ship as per release bond, signed by W. H. Ellis, master, and Carl Kohn, surety, is $5,000, and the value of the cotton released to the underwriters in the sum of .

This being proportioned, together with the costs, the ship would have to contribute $ thereof, to the salvage claims and costs, independently of the claim of H. Ellerman for wharfage, in the sum of $102.72.

In my tableau of distribution as to the matter of clerks, stenographers, and fees of proctor for libellants, I have only stated the balances due, part payments having been made on % of these costs by consent

187 of counsel for claimants. In accordance with my statement as to allowance to be made to proctor of libellants as fees on depositions and docket fee of $20, he would be entitled to $509.50; he has already received on account the sum of $275.50, leaving due him a balance of $234.50 as stated below:

Tableau of distribution.

Clerk's costs balance	$484	15
Stenographer "	831	
Proctor for libellant	234	50
	$1,549	65
Tug Protector	2,404	57
To the owners of the New Harbor Protection Co	3,821	58

To the crew the sum of $1,273.85, in the following proportions:

J. F. Colburn, master	276	35
J. G. Davidson, mate	138	35
R. Shaw, 1st engineer	184	35
J. Grant, 2d do.	138	35
A. Hale, watchman	83	15
Pat. Egan, fireman	92	40
M. Grant, "	92	40

Ro't Liesman, sailor	74
N. Wilson, "	74
J. C. Wheeler, cook	92 40
T. Hays, ass't "	28 10
	1,273 85

188 TUG NORMAN.

To the owners of the tug	500 00
To the crew $500, in the following proportions:	
A. W. Averill, master	120 00
E. Whittemore, 1st engineer	80
H. Skinner, 2 "	52
B. J. Collins, fireman	36
R. Scott, "	36
J. Schneider, "	36
Durand, "	36
A. Rohn, deck-hand	24
T. Burns, "	24
J. McPherson, quartermaster	28
M. Grace, "	28
	500 00

TUG HARRY WRIGHT.

To the owners of the tug	500 00
To the crew $500, in the following proportions:	
N. C. Hopper, master	128 80⅝
M. Ridde, 1st eng'r	105 05⅝
J. Hays, 2d "	77 30⅝
J. H. Hopper, steersman	36 10⅝
J. Gavey, deck-hand	30 95⅝
D. Rose, "	30 95⅝
E. O'Brien, fireman	46 40⅝
Ed. Walsh, "	46 40⅝
	500 00

TUG RIO GRANDE.

189 To the owners	500 00
To the crew $500, in the following proportions:	
S. B. Caldwell, master	102 82½
D. Rowland, 1st eng'r	82 32½
H. Miller, 2d "	49 52½
Rob. Stevens, fireman	37 22½
John McGowan, "	37 22½
Tony Roach "	37 22½
J. Erickson, deck h'd	24 92½

H. Higgins, "	24	92½
J. Smith, "	24	92½
T. Brown, "	24	92½
D. Kelly, cook	41	32½
T. Lawrence, boy	12	62½
	500	00

TUG ASPINWALL.

To the owners	500	00
To the crew $500, in the following proportions:		
J. M. Kenny, master	160	10
J. O'Neil, 1st eng'r	160	10
H'y Kamer, steersman	51	30
T. Coleman, fireman	57	70
A. Armstead, steward	44	90
A. Lindsay, boy	12	95
F. Fahley, deck h'd	12	95
	500	00

TUG CHARLIE WOOD.

To the owners	375	00
To the crew $375, in the following proportions:		
190 W. M. Wood, master	108	05
C. H. Caron, eng'r	90	
Jno. Bouller, jr., mate,	36	10
Geo. Hantwill, deck h'd	28	90
H. Donnelly, watchman	39	70
John Smith, fireman	32	50
Anthony Brown, watchman	39	70
	$375	00

TUG BELLE DARLINGTON.

To the owners	250	00
To the crew $250, in the the following proportions:		
Ed. Wilcox, master	60	16⅓
J. Montreuil, eng'r	60	16⅓
L. O. Desforges, clerk	60	16⅓
Tiddy Hayes, fireman	27	16⅓
Jno. Fulton, deck h'd	18	16⅓
Alex. Picou, cook	24	16⅓
	$250	00

TUG CONTINENTAL.

To the owners	175	00
To the crew $175, in the following proportions:		
G. L. Kouns, master	54	25

J. D. Mott, pilot	22
A. O. Guillotte, 1st eng'r	43 50
B. Guillotte, 2d do.	26 30
Andy Johnson, fireman	15 35
deck hand	13 60
	175 00

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TUG N. M. JONES.

To the owners	175 00
To the crew $175, in the following proportions:	
H. P. McNeely, master	55 90
J. L. Smith, eng'r	43 10
P. Murphy, watchman	15 20
J. Leland, 1st mate	15 20
J. P. Pepper, 2d "	15 20
P. Sluner, fireman	15 20
C. Blackburn, cook	15 20
	175 00

TUG IDA.

To the owners	125 00
To the crew $125, in the following proportions:	
W. F. Spence, master	33 70
B. F. Townsend, eng'r	30 30
Alf. Scott, deck h'd	16 24
Geo. Davis, watchman	16 24
Ed. Green, cook	12 12
Jas. Troy, fireman	5 40
Isaac Park, "	5 40
Martin Burrows "	5 40
	125 00

TUG WASP.

To the owners	50 00
To the crew $50, in the following proportions:	
H. H. Wrightley, master	23 12
Jno. J. Walsh, eng	15 92
192 Chas. Davis, fireman	7 82
Sam. Davis, deck h'd	3 14
	50 00

TUG FEARN.

To the owners	50 00
To the crew $50, in the following proportions:	
M. Iver, pilot-master	14 14

Jno. Adams, eng'r	14 14
M. Daneso, deck h'd	7 24
Geo. Brooks, fireman	7 24
Charley, cook	7 24

TUG ELLA WOOD NO. 2.

To the owners	125 00
To the crew $125, in the following proportions:	
Jno. A. Ford, master	45 52 6/7
E. E. Woniger, eng	26 02 6/7
Robt. Plant, deck h'd	10 42 6/7
J. B. Nicholas "	10 42 6/7
Higgins "	10 42 6/7
Edward, cook	10 42 6/7
Peet, fireman	11 72 6/7
	125 00

TUG J. COOPER, JR.

To the owners	50 00
To the crew $50, in the following proportions:	
J. J. Williams, master	13 00
193 J. J. Guillotte, eng'r	13 20
D. Grace, fireman	6
C. Vogt, steersman	4 80
J. McPherson "	4 80
J. Baker, cook	6
T. O'Hara, boy	2
	50 00
Geo. Canby, compensation for personal services	500 00
Geo. Canby, disbursements	1,587 00
B. D. Wood, compensation for personal services	450 00
" " disbursements	672 00
N. Theodore, compensation for personal services	150 00
" disbursements	208 00
M. W. Francis, compensation for personal services	150 00
" " disbursements	34
Drysdale & Sons, compensation for personal services	150 00
" disbursements	827 50
With, Rogers, Dower, Byrne, Savard, Weichman, Raynor, Keveney, J. Smith & F. Laguay, laborers, compensation, @ $10 each	100 00
Emile Laine, Jno. Lyons, W. McFord, Geo. Goetz, Jno. Roberts, laborers, compensation, @ $10 each	50 00
194 Henry Ellerman, wharfage claim against ship, to be paid by sureties on release bond	102 72
Damages to wharf, to be paid proportionately as hereinabove set forth by vessel and cargo	250 00

Thomas O'Connor, compensation for personal services	250	00
Value of hose lost	235	00
James Boyce, compensation for personal services	50	00
M. Ray, compensation for personal services	50	00
James Moore, compensation for personal services	50	00
William Gleason, compensation for personal services	300	00

FIRE-ENGINE COMPANIES.

	Volunteer No. 1, for 56 hours' pumping out	840	00
	Labor of firemen in attendance	247	50
	Washington No. 20, 56 hours' pumping out	840	00
	Labor of firemen in attendance	175	00
	Vigilant No. 3, 84 hours' pumping out	1,260	00
	Labor of firemen in attendance	370	
195	Perseverance No. 13, 84 hours' pumping out	1,260	00
	Labor of firemen in attendance	280	
	Jackson No. 18, 70 hours' pumping out	1,050	00
	Labor of firemen in attendance	390	00
	Creole No. 9, 80 hours' pumping out	1,200	00
	Labor of firemen in attendance	210	
	Crescent No. 24, 90 hours' pumping out	1,350	00
	Labor of firemen in attendance	375	
	Phœnix No. 8, 60 hours' pumping out	900	00
	Labor of firemen in attendance	200	
	Louisiana Hose Co., 70 hours' pumping out	1,050	00
	Labor of firemen in attendance	390	
	Philadelphia No. 4, 62 hours' pumping out	930	00
	Labor of firemen in attendance	180	00
	Mississippi No. 2, 54 hours' pumping out	960	00
	Labor of firemen in attendance	205	
196	Mechanics' No. 6, 72 hours' pumping out	1,080	00
	Labor of firemen in attendance	420	

The question as to the proportion which the ship will have to contribute towards costs and charges I will reserve until the decision of this hon. court on the proposition of claimants as to the period within which compensation was to be allowed for pumping out to the fire-engines.

Very respectfully submitted,

J. DEVONSHIRE,
U. S. Comm'r.

AP'L 19, '79.

Exception of underwriters to the report.—Filed 18th April, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } 11207.

Now come the Atlantic Mutual Ins. Co., of New York, and other claimants of the cargo of cotton libelled herein and proceeds of same, and except to the report filed herein on the 16th of April, 1879, by John

Devonshire, commissioner, and for cause and grounds of exception
197 as made before the filing of said report and now reiterated, say:

1. They except and object to that portion of said report making the following allowances to certain fire engines companies and labor of firemen, as detailed in said report, to wit:

To Volunteer No. 1, for 56 hours' pumping out	840	
Labor, firemen in attendance	247	50
To Washington No. 20, 56 hours' pumping out	840	
Labor of firemen in attendance	175	
To Vigilant No. 3, 84 hours' pumping out	1,260	
Labor of firemen in attendance	370	
To Perseverance No. 13, 84 hours' pumping out	1,260	
Labor of firemen in attendance	280	
To Jackson No. 18, 70 hours' pumping out	1,050	
Labor of firemen in attendance	390	
To Creole No. 9, 80 hours' pumping out	1,200	
Labor of firemen in attendance	210	
To Crescent No. 24, 90 hours' pumping out	1,350	
Labor of firemen in attendance	375	
To Phœnix No. 8, 60 hours' pumping out	900	
Labor of firemen in attendance	200	
198 To Louisiana Hose Co. No. , 70 hours' pumping out	1,050	
Labor of firemen in attendance	390	
To Philadelphia No. 14, 62 hours' pumping out	930	
Labor of firemen in attendance	180	
To Mississippi No. 2, 64 hours' pumping out	960	
Labor of firemen in attendance	205	
To Mechanics No. 6, 72 hours' pumping out	1,080	
Labor of firemen in attendance	420	

That the said allowances to the said fire companies for pumping out and for labor of firemen should be rejected, because they are not sanctioned by law nor by the letter or spirit of this hon. court herein rendered; because they are excessive and unfounded in law and unsupported by the evidence, which clearly establishes the fact that no such pumping and labor was necessary after 12 o'clock on Thursday, the 28th of February, 1878.

Exceptors ask that said allowances be rejected, and that nothing be allowed to said companies or firemen, nor to the Hope Hook and Ladder Co. No. 3 and members thereof, nor to Pelican Hook and Ladder
199 Co. No. 4 and members thereof.

They pray that their exception, be maintained and for general relief.

J. McCONNELL,
Proctor for Claimants.

Exception of the owners of the Norman to report of commissioner.—Filed April 19, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } 11207.

The report of the commissioner, so far as the amount awarded the owners

of the Norman, Harry Wright, Rio Grande, and N. M. Jones, is hereby excepted to, on the ground that the amount of the award is inadequate to the , what is a sufficient award in said cause, that the amount thereof should be increased.

Wherefore appearers pray that the said report may be returned to the commissioner for further consideration thereof in accordance therewith.

E. D. CRAIG,
Proctor for Owners of Norman.
HORNOR & BENEDICT,
200 *Proctors for Rio Grande & Jones.*
H. E. UPTON,
Proctor for Harry Wright.

Order on the claims of Thos. O'Connor, Ray and Boyce, and fire-engine companies, and overruling the exceptions of the Norman, Rio Grande, N. M. Jones, &c.—April 22, 1879.

NEW HARBOR PROTECTION CO.
vs. } 11207.
SHIP TORNADO & CARGO.

On the claim of the fire-engines and O'Connor, chief, considering the commissioner's report, the oppositions thereto, and the argument of counsel, it is ordered that Thomas O'Connor be allowed the amount taxed by the commissioner, and that in addition thereto the sum of $158.50, making a total of $643.50; that Ray and Boyce be allowed $50 each, and that the sum of $700 be allowed for the services of the different engines, to be divided among the different engine companies mentioned in the re-
201 port, the question as to the compensation of the individual firemen to be left with the respective companies.

It is further ordered that the exceptions by the owners of the tugs Norman, Rio Grande, N. M. Jones, &c., be overruled, the question as to the allowance to Joseph Cooper being referred back to be disposed of in connection with the taxation of marshal's costs.

Commissioner's report on the proportion due by the ship in salvage and costs.—Filed April 23d, 1879.

NEW HARBOR PROTECTION CO.
vs. } 11207.
SHIP TORNADO.

The undersigned commissioner would beg leave to report that this hon. court, having finally disposed of all exceptions to the report and tableau of distribution, it became necessary for him to arrive at the proportion to be paid by the ship and cargo towards the payment of the costs and the several claims detailed in the tableau of distribution:

202	The nett amount of proceeds of cotton is.....	$116,032 50
	The amount for which ship was released is.....	5,000
Total amount of costs and salvage allowed is.....		$40,838 47

The proportion which the cotton would pay towards costs & salvage is	$39,150 42
Amount to be paid by ship	1,588 05
Total amount salvage & costs	$40,838 47

In my calculations, as set forth in the tableau of distribution, I have not assessed the ship with a pro rata payment of each claim and each item of costs, as such a course might leave matters in a state of confusion, but have taken the gross amounts as stated and arrived at the proper proportion.

The release bond for the ship was signed by W. H. Ellis, as master, &c., and by Carl Kohn, esq., as surety in the sum of $5,000.

Considering the premises above stated as stated above, I would recommend that the claims stated in the tableau of distribution be paid from the fund in court, and that the claimants of said fund recover from the
203 principal and surety on said release bond the sum of $1,688.05.

Very respectfully,

J. DEVONSHIRE, *Comm'r.*

Order on foregoing report.—23d April, 1879.

NEW HARBOR PROTECTION CO. vs. SHIP TORNADO. } 11207.

Ch's S. Rice, esq., this day presented the commissioner's report on the proportion due by the ship of salvage and costs, and it was ordered that the same be placed on file and held up for consideration.

Application for appeal.—Filed Ap'l 24, 1879.

NEW HARBOR PROTECTION CO. vs. SHIP TORNADO, &C. } 11207.

Messrs. Hornor & Benedict, proctors for the owners of the tow-boat Rio Grande, The Ocean Tow-boat Co., for the Good Intent Tow-boat
204 Co., owners of the steam-tug Harry Wright, and for S. and J. M. Flanagan and E. A. Yorke, owners of the steam tow-boat Norman, and for Sam'l S. Brown and J. W. Schoenmaker, adm'r of the estate of W. H. Brown and Nathaniel M. Jones, owners of the steam tug-boat N. M. Jones, being joined herein by E. D. Craig, esq., attorney for S. and J. M. Flanagan and E. A. Yorke, having this day presented a motion for a suspensive appeal in this cause, returnable to the next term of the circuit court of the U. S. for this district, on giving bond and security in the sum of $, the court directed said motion to be filed, and took the same under advisement.

Order allowing appeal, entered 26th April, 1879.

NEW HARBOR PROTECTION CO. vs. SHIP TORNADO. } 11207.

The court having duly considered the motion for appeal, submitted on

24th instant, it is ordered that the same be allowed, and it is as follows, viz:

205 On motion of Hornor & Benedict, proctors for the Ocean Tow-boat Co., owners of the tow-boat Rio Grande, and for the Good Intent Tow-boat Co., owner of the steam-tug Harry Wright, and for S. & J. M. Flanagan and E. A. Yorke, owners of the steam tow-boat Norman, and for Sam'l S. Brown and John W. Schoenmaker, adm'r of the estate of Wm. H. Brown, and Nathaniel M. Jones, owners of the steam tug-boat N. M. Jones, being joined herein by Emmet D. Craig, esq., attorney for S. & J. M. Flanagan and E. A. Yorke, all being parties and intervening libellants herein, and on showing to the court that they are informed and believe that there is error to their prejudice in the several judgments rendered by this hon. court on the 18th day of February, 1879, and on the 19th day of April, 1879, and on the 22d day of April, 1879, and that they desire to take a suspensive appeal therefrom,

It is ordered by the court that a suspensive appeal be and is hereby granted to these intervenors, returnable to the next term of the hon. the circuit court of the United States for the 5th circuit and district of Louisiana, upon appellants giving bond and security in the sum of $2,500, conditioned as the law directs.

206 *Appeal bond.—Filed 26 April*, 1879.

U. S. OF AMERICA,
District of Louisiana:

District court of the United States for the district of Louisiana.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } No. 11207.

Know all men by these presents, that we, the Ocean Tow-boat Company, of New Orleans, owner of the steam tow-boat Rio Grande; the Good Intent Tow-boat Company, of New Orleans, owner of the steam tow-boat Harry Wright; S. and J. M. Flanagan and Edward A. Yorke, owners of the steam tow-boat Norman, and Sam'l S. Brown and Jas. N. Schoenmaker, administrators of the estate of Wm. H. Brown and Nathaniel M. Jones, owners of the steam tug-boat N. M. Jones, as principal, and W. H. McLellan and Wm. G. Coyle, of New Orleans, as sureties, are held and firmly bound unto the New Harbor Protection Company, T. F. Colburn, J. G. Davidson, R. Shaw, J. Grant,

207 A. Hale, Pat. Egan, M. Grant, Rob't Liesman, N. Wilson, J. C. Wheeler, T. Hays, The Harbor Tow-boat Company, Geo. L. Kouns, J'ph D. Mott, A. O. Guillotte, Bartholomew Guillotte, Andrew Henderson, Nils Anderson, Philip Chaney, Andrew Drysdale, John Drysdale, Drysdale & Son, H. T. McNeely, J. L. Smith, P. Murphy, J. Leland, J. F. Pepper, P. Steiner, C. Blackburn, George Canby, Marshall J. Smith & Co., Marshall J. Smith, Emile P. Roux, James Moore, Julius Surey, L. O. Desforges, Edw. Wilcox, J. Montreiul, Teddy Hays, Jno. Fulton, Aleck Picou, Edmund L. Copes, J'ph. M. Kearney, William H. Begg, James C. Neill, J'ph Cooper, Jno. Robinson, J. M. Kenny, J.

O'Neil, H'y Kamer, T. Coleman, A. Armstead, A. Lindsay, F. Fahley, B. D. Wood, Jno. A. Wood, Jonathan H. Wood, Wm. M. Wood, C. H. Caren, Jno. Boutler, jr., Geo. Hanterill, N. Donnelly, Jno. Smith, Anthony Brown, B. D. Wood & Bros., Flora A. Theodore, wife of Nicholas Theodore, Mike Iver, John Adams, Nicholas Dennis, George Eliot, Chas. Cantrelle, George Brooks, Rob. Scott, B. Collins, Jno. Schroder, Louis Durand, Jno. McPherson, Arnold Bohner, Thos. Burns, Mike Grace, Edw'd Walsh, Edw. O'Brien, Dan'l Rose, Thomas O'Connor,
208 Nicholas Theodore, M. W. Francis, George Glidden, The St. Bernard Coal Co., W. F. Spence, B. F. Townsend, Alf. Scott, George Davis, Ed. Grees, James Troy, Isaac Parke, Martin Burrows, A. W. Averill, E. Whittemore, H. Skinner, B. J. Collins, R. Scott, Jno. Schneider, Durand, A. Kohn, Thos. Burns, J. McPherson, M. Grace, S. B. Caldwell, D. Rowland, H. Miller, Bob Stevens, Jno. McGowan, Tony Roach, J. Erickson, H. Higgins, J. Smith, T. Brown, D. Kelly, T. Laurence, W. G. Coyle, Jno. E. Ford, E. E. Nouiger, Rob. Plant, J. B. Nicholas, Higgins, Edward Peet, Henry Ellerman, H. C. Hopper, N. Riddle, J. Hays, J. H. Hopper, J. Garey, D. Rose, E. O'Brien, Ed. Welsh, Wm. With, J'ph A. Rogers, Thos. Dower, Randell Byrne, John Savard, Jno. D. Weichman, Fred. W. Rayner, Peter Kerency, The Firemen's Charitable Association, Volunteer Fire Company No. 1, Mississippi Fire Company No. 2, Vigilant Fire Co. No. 3, Mechanic's Fire Co. No. 6, Phœnix Fire Co. No. 8, Creole Fire Co. 9, Perseverance Fire Company No. 13, Philadelphia Fire Company No. 18, Washington Fire Company No. 20, Crescent
209 Fire Co. No. 24, Louisiana Hose Company, Hope Hook & Ladder Co. No. 3, Pelikan Hook & Ladder Co. No. 4, M. Ray, Jas. Boyce, F. W. Laguay, John Smith, New Orleans Night-Watchman Company, William Gleason, Emile Laine, Jno. Lyons, Wm. McFord, George Goertz, Jno. Roberts, Benj. Andrews, Wm. H. Wrigley, Jno. J. Walsh, Sam. Charles, Sam. Davis, Jno. J. Williams, J. J. Guillotte, D. Grace, C. Voght, J. McPherson, J. Baker, T. O'Hara, David Anderson, William Anderson, The Atlantic Mutual Insurance Company of New York, The British and Foreign Marine Insurance Company of Liverpool, The Standard Marine Insurance Company of Liverpool, The Factors and Traders' Insurance Company of New Orleans, The New Orleans Insurance Association, The Insurance Company of North America, The Phœnix Insurance Company of Brooklyn, The Rhenish Westphalian Lloyds Marine Insurance of M. Gladbach, R. A. Stewart and J. Stewart, and unto all other parties in interest, if any there be, and unto John Devonshire, clerk of the U. S. district court, district of Louisiana, in the sum of two thousand five
210 hundred dollars, to be paid to the said New Harbor Protection Company and others above named herein, for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans the 26 day of April, 1879.

Whereas the above-named Ocean Tow-boat Company, Good Intent Tow-boat Company, S. and J. M. Flanagan, Edw. A. Yorke, Samuel S. Brown, and John W. Schoenmaker, administrators of the estate of Wm. H. Brown, and Nathaniel M. Jones, have appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana, from final judgments of the district court of the U. S. for said dis-

trict, rendered against them on the 18th day of February, 1879, and on the 19th day of April, 1879, and on the 22d day of April, 1879, in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and
211 answer all damages and costs, and satisfy whatever judgment may be rendered against them, if they fail to make their appeal good, then this obligation is to be void; otherwise the same shall be and remain in full force and effect.

OCEAN TOW-BOAT CO.
WM. H. McLELLAN, *Pres.*
GOOD INTENT TOW-BOAT CO.,
Pr. W. G. COYLE, *Pres.*
S. & J. M. FLANAGAN,
By ED. A. YORKE, *Ag't.*
SAM'L S. BROWN.
JAMES W. SCHOENMAKER, *Adm'r.*,
By GEO. F. ROOTES, *Ag't.*
N. M. JONES,
By GEO. F. ROOTES, *Ag't.*
WM. H. McLELLAN.
W. G. COYLE.

Signed, sealed, and delivered in the presence of—
JOSEPH P. HORNOR.
EDW'D A. YORKE.

Bond approved.

EDWARD C. BILLINGS, *Judge.*

Exceptions to comm'r's report of 26th April, 1879.—Filed 28th April, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO. } 11207

212 Now into court come the Atlantic Mutual Ins. Co. of New York, and others, underwriters and claimants of the cargo of cotton herein and proceeds thereof, and except to the report made and filed herein on the 26 April, 1879, by Jno. Devonshire, commissioner, and for cause of exception, say:

1. That the amount of the allowance under the opinion and order of reference made by the court, and the law is excessive and exorbitant, and not supported by the evidence.

2. That the said master first allows $1,080, for 24 hours salvage service at $15 per hour, then erroneously adds $2,700, for services never rendered and not contemplated to be compensated under the opinion and decree of this hon. court, said allowance being unsupported by the evidence and unwarranted by law.

3. That said master erred in allowing as many as 6 firemen to each engine and in allowing each fireman $5 per hour, instead of $5 per day as directed by the court, in the order of reference.

213 4. That said master erred in not following the plain terms of the opinion of the court, and the order of reference, and in allowing an amount to said fire engines, greatly in excess of what was contemplated therein.

5. That the findings of fact of said master in regard to the length of time said engines and firemen were actually engaged in working in pumping out said vessel are erroneous, and not supported by the evidence, and contrary to law, and the opinion of this hon. court.

6. That the said master also erred for the reasons hereinabove stated in allowing $150 to J. Evans and others of Hope Hook and Ladder Co. No. 3, and to E. Develle and others of Pelican Hook & Ladder Co. No. 4, as utterly unwarranted either by law or the evidence under the decree and opinion of reference.

Wherefore these respondents and claimants pray that their exceptions be maintained, and that said report be rejected and for general relief.

J. McCONNELL,
Proctor for Claimant.

214 *Final decree entered May 24, 1879.*

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, &C. } 11207.

This cause having been heard on the reports of the commissioner, the exceptions and oppositions thereto, and argument of counsel thereon, and the court having duly considered the same, doth now order, adjudge, and decree as follows, to wit:

That the exceptions and oppositions be overruled; that the several reports be treated as a unit; that as heretofore amended the report be confirmed, and that the compensation for services rendered in this cause be fixed as follows:

1st. Clerk, registrar, & stenographer	4,046	15
Marshal	3,371	77
Proctor's fee, & fee on depositions	510	
Comm'r for report	500	
Joseph Cooper	3,022	10
Night watchmen	95	
2d. Owners of tug Protector	$3,821	58
And their expenses	2,404	57

3d. The crew of said tug, viz:

215 T. F. Colburn, master	276	35
J. G. Davidson, mate	138	35
R. Shaw, 1st eng	184	35
J. Grant, 2d do.	138	35
A. Hale, watchman	83	15
Pat. Egan, fireman	92	40
M. Grant, "	92	40
Rob. Liesman, sailor	74	
N. Wilson, "	74	

J. C. Wheeler, cook	92	40		
T. Hays, ass't "	28	10		
			$1,273	85
4. Owners of tug Norman			500	
5. The crew of said tug, viz:				
A. W. Averill, master	120			
E. Whittemore, 1st eng	80			
D. Skinner, 2d "	52			
B. J. Collins, fireman	36			
R. Scott, "	36			
Jno. Schneider, "	36			
Durand, "	36			
A. Kohn, deck h	24			
Thos. Burns, "	24			
J. McPherson, quartermaster	28			
M. Grace, "	28			
			500	
6. Owners of tug Harry Wright			500	
7. The crew of said tug, viz:				
N. C. Hopper, master	128	$80\frac{5}{8}$		
N. Riddle, 1st eng	103	$05\frac{5}{8}$		
J. Hays, 2d eng	77	$30\frac{5}{8}$		
J. Garey, deck hand	30	$95\frac{5}{8}$		
D. Rose, deck h	30	$95\frac{5}{8}$		
216 J. H. Hopper, steersm'	36	$10\frac{5}{8}$		
E. O'Brien, fireman	46	$40\frac{5}{8}$		
E. Welsh, "	46	$40\frac{5}{8}$		
			500	
8. Owners of tug Rio Grande			500	
9. The crew of said tug, viz:				
S. B. Caldwell, master	102	$82\frac{1}{2}$		
D. Rowland, 1st eng'r	82	$32\frac{1}{2}$		
H. Miller, 2 d.o	49	$52\frac{1}{2}$		
Rob. Stevens, fireman	37	$22\frac{1}{2}$		
J. McGowan, "	37	$22\frac{1}{2}$		
Tony Roach, "	37	$22\frac{1}{2}$		
J. Erickson, deck h	24	$92\frac{1}{2}$		
H. Higgins, "	24	$92\frac{1}{2}$		
J. Smith, "	24	$92\frac{1}{2}$		
T. Brown, "	24	$92\frac{1}{2}$		
D. Kelly, cook	21	$32\frac{1}{2}$		
T. Lawrence, boy	12	$62\frac{1}{2}$		
			500	
10. Owners of tug Aspinwall			500	
11. The crew of said tug, viz:				
J. M. Kenny, master	160	10		
J. O'Neil, 1st eng	160	10		
H. Kamer, steersman	51	30		
T. Coleman, fireman	57	70		

A. Armstead, steward	44	90	
A. Lindsay, boy	12	95	
F. Fahley, deck	12	95	
			500
12. Owners of tug Charley Wood			375
13. The crew of said tug, viz:			
217 M. M. Wood, master	108	05	
C. H. Caren, eng	90	05	
J. Boutler, jr., mate	36	10	
Geo. Hauterie, deck	28	90	
H. Donnelly, watchm'	39	70	
Jno. Smith, fireman	32	50	
Anth'y Brown, watchm'	39	70	
			375
14 owners of tug Belle Darlington			250
15. The crew of said tug, viz:			
Ed. Wilcox, master	60	16⅓	
J. Montreuil, eng'r	60	16⅓	
L. O. Desforges, cl'k	60	16⅓	
Fiddy Hayes, fireman	27	16⅓	
Jno. Fulton, deck	18	16⅓	
Aleck Picou, cook	24	16⅓	
			250
16. Owners tug Continental			175
17. The crew of said tug:			
Geo. L. Kouns, master	54	25	
J. D. Mott, pilot	22		
A. O. Guillotte, 1st eng	43	50	
B. Guillotte, 2d "	26	30	
Andy Johnson, fireman	15	35	
, deckhand	13	60	
			175
18. Owners tug N. M. Jones			175
19. The crew of said tug, viz:			
H. S. McNeeley, master	55	90	
J. L. Smith, eng	43	10	
P. Murphy, watchman	15	20	
218 J. Leland, 1st mate	15	20	
J. F. Pepper, 2 "	15	20	
P. Shiner, fireman	15	20	
C. Blackburn, cook	15	20	
			175
20. Owners tug Ida			125
21. The crew of said tug:			
W. F. Spence, master	33	70	
B. F. Townsend, eng'r	30	30	
Alf. Scott, deck h	16	24	
Geo. Davis, watchm'	16	24	

Edw. Green, cook	12 12	
Jas. Troy, fireman	5 40	
Isaac Park, "	5 40	
M. Burrows, "	5 40	
		125
22. Owners tug Wasp		23 12
23. The crew of said tug, viz:		
W. H. Wrighley, master	23 12	
Jno. J. Walsh, eng	15 92	
Ch's Davis, fireman	7 82	
Sam. Davis, deck	3 14	
		50
24. Owners tug Fearn		50
25. The crew of said tug:		
M. Iver, pilot & master	14 14	
Jno. Adams, eng	14 14	
Mich. Daness, deck	7 24	
Geo. Brooks, firem'	7 24	
Charley, cook	7 24	
		50
26. Owners tug Ella Wood, No. 2		125
27. The crew of said tug:		
219 J. A. Ford, master	45 52 6/7	
E. E. Wringer, eng	26 02 6/7	
Rob. Plant, deck	10 42 6/7	
J. B. Nicholas, "	10 42 6/7	
Higgins, "	10 42 6/7	
Edward, cook	10 42 6/7	
Peet, firem'	11 72 6/7	
		125
28. Owners tug J. Cooper, jr		50
29. The crew of said tug:		
J. J. Williams, master	13 20	
J. C. Guillotte, eng	13 20	
D. Grace, firem'	6	
C. Voght, steersman	4 80	
J. McPherson, do.	4 80	
J. Baker, cook	6	
T. O'Hara, boy	2	
		50
30. Geo. Canby, for personal services	$5 00	
And for disbursements	$1,587	
		2,087
31. B. D. Wood, personal services	450	
" " " disbursements	672	
		1,122
32. N. Theodore, personal services	$150	
disbursements	208	
		358

33. M. W. Francis, personal services..... 150
disbursements..... 34
184

34. Drysdale & Son, personal services..... 150
" disbursements..... 827 50
977 50

35. With, Rogers, Dower, Byrne, Savard, Weichman, Raynor, Keveney, J. Smith, & T. Lagnay, laborers, $10 each..... 100

220 36. Emil Laine, Jno. Lyons, Wm. McFord, Geo. Goertz, Jno. Roberts, $10 each..... 50

37. Henry Ellerman, damage to wharf..... 250

38. W. A. Anderson, reimbursement for lumber taken..... 318 30

39. Geo. Glidden, materials..... 920 40

40. Thos. O'Connor..... 643 50

41. James Boyce..... 50

42. M. Ray..... 50

43. James Moore..... 50

44. Wm. Gleason..... 300

45. And the following twelve fire-companies, viz: Volunteer, No. 1; Washington, No. 20; Vigilant, No. 3; Perseverance, No. 13; Jackson, No. 18; Creole, No. 9; Crescent, No. 24; Phœnix, No. 8; Louisiana Hose Co.; Philadelphia, No. 14; Mississippi, No. 2; and Mechanics, No. 6, the sum of $250 each, making altogether..... $3,000

Out of which they must pay their firemen who rendered services in the premises, and must further pay to J. Evans et al., of Hope, No. 3, $75; and a like amount to E. Develle et al., of Pelican, No. 4.

It is further ordered that all of the foregoing allowances be paid
221 out of the fund in the registry, excepting such as have already been paid under the orders of the court, and which payments are approved.

And it is further ordered that the proportion due by the ship in costs and salvage be fixed at $670.44, being $133.07 costs, and $537.37 salvage, and that said sum of six hundred and seventy $\frac{44}{100}$ dollars be paid by Robert N. Stuart and John Stuart, of New Brunswick, and Carl Kohn, of New Orleans, they being the parties to the bond upon which the ship Tornado was released from seizure, the two former being the principals by their bailee, and the latter the surety on said bond. Judgment rendered 24 May, 1879. Judgment signed 29 May, 1879.

EDWARD C. BILLINGS, *Judge.*

Order of appeal.—Entered May 26, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO.
} 11207.

On motion of Hornor & Benedict, proctors for the Ocean Tow-
222 boat Co.; owners of the tow-boat Rio Grande, and for the Good-Intent Tow-boat Co.; owners of the steam-tug Harry Wright, and

for S. & J. M. Flanagan, and E. A. Yorke, owners of the steam tow-boat Norman, and for Samuel J. Brown and John W. Schoenmaker, adm'rs of the est. of W. H. Brown and Nathaniel M. Jones, owners of the steam tug-boat N. M. Jones, being joined herein by Emmet D. Craig, esq., attorney for S. and J. M. Flanagan, and E. A. Yorke, all being parties and intervening libellants herein, and on showing to the court, that they are informed and believe, that there is error to their prejudice in the several judgments rendered by this hon'ble court in this case on the 18th day of February, 1879, and on the 22d day of April, 1879, and on the 29th day of April, 1879, and on the 24th day of May, 1879, and that they desire to take a suspensive appeal therefrom.

It is ordered by the court that a suspensive appeal be and is hereby granted to these intervenors, returnable to the next term of the hon. the circuit court of the United for the 5th circuit and district of Louisiana, upon appellants giving bond and security in the sum of $2,500
223 conditioned as the law directs.

Appeal bond.—Filed 26' May, 1879.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO & CARGO. } 11207.

Know all men by these presents that we, The Ocean Tow-boat Company, of New Orleans, owner of the steam tow-boat Rio Grande; The Good Intent Tow-boat Company, of New Orleans, owner of the steam tow-boat Harry Wright; S. and J. M. Flanagan and Edward A. Yorke, owners of the steam tow-boat Norman; and Samuel S. Brown and James W. Schoenmaker, administrators of the estate of William H. Brown, and Nathaniel M. Jones, owners of the steam tug-boat N. M. Jones, as principals, and William H. McLellan and William G. Coyle, as sureties, are held and firmly bound unto the New Harbor Protection Company, J. F. Colburn, J. G. Davidson, R. Shaw, J. Grant, A. Hale, Pat Egan, M. Grant, Robert Liesman, N. Wilson, J. C. Wheeler, T. Hays, The Harbor
224 Tow-boat Company, George L. Kouns, Joseph D. Mott, A. O. Guillotte, Bartholemy Guillotte, Andrew Henderson, Neils Neilson, Phillip Chancy, Andrew Drysdale, Jno. Drysdale, Drysdale & Son, H. P. McNeely, J. L. Smith, P. Murphy, J. Leland, J. F. Pepper, P. Shiner, C. Blackburn, George Canby, Marshall J. Smith & Co., Marshall J. Smith, Emile P. Roux, James Moore, Julius Surey, L. O. Desforges, Edward Wilcox, J. Montreuil, Tiddy Hayes, Jno. Falton, Aleck Picou, Edmund L. Cope, Joseph M. Kearney, Wm. H. Begg, Jas. O'Neil, Joseph Cooper, Jno. Robinson, J. M. Kenny, J. O'Neil, H'y Kamer, J. Coleman, A. Armstead, A. Lindsay, F. Fahley, Burris D. Wood, Jno. A. Wood, Jonathan H. Wood, William M. Wood, C. H. Caven, John Boutler, jr., Geo. Hauterine, H. Donelly, Jno. Smith, Anthony Brown, B. D. Wood & Bros., Flora A. Theodore, wife of N. Theodore, Mike Iver, Jno. Adams, Nicholas Denis, George Elliott, Chas. Cantrelle, George Brooks, Robert Scott, B. Collins, Jno. Schroeder, Louis Durand, Jno. McPherson, Arnold Bohner, Thomas Burns, Mike Grace, Ed. Walsh, Edw'd O'Brien, Daniel Rose, Thomas O'Connor, Nicholas Theodore, M. W. Francis, Geo. Glidden, The St. Barnard Coal Company, W. F. Spence, B. F. Townsend,

225 Alfred Scott, Geo. Davis, Ed. Green, Jas. Troy, Isaac Park, Martin Burrows, A. W. Averill, E. Whittemore, H. Shinner, B. J. Collins, R. Scott, Jno. Schneider, Durand, A. Kohn, Thomas Burns, J. McPherson, M. Grace, S. B. Caldwell, D. Rowland, H. Miller, Rob. Stevens, John McGowan, Tony Roach, J. Erickson, H. Higgins, J. Smith, T. Brown, D. Kelly, T. Lawrence, W. G. Coyle, John E. Ford, E. E. Woniger, Robert Plant, J. B. Nicholls, Higgins, N. Riddle, J. Hays, J. H. Hopper, J. Garey, D. Rose, E. O'Brien, Ed. Welshe, William With, Joseph H. Rogers, Thos. Dower, Randall Byrne, Jno. Savard, John D. Weichman, Fred. W. Rayner, Peter Keveney, The Firemen's Charitable Association, Volunteer Fire Company No. 1, Mississippi Fire Company No. 2, Vigilant Fire Company No. 3, Mechanics' Fire Company No. 6, Phœnix Fire Company No. 8, Creole Fire Company No. 9, Perseverance Fire Company No. 13, Philadelphia Fire Company No. 14, Jackson Fire Company No. 18, Washington Fire Company No. 20, Crescent Fire Company No. 24, Louisiana Hose Company, Hope Hook and Ladder Company No. 3, Pelican Hook and Ladder Company No. 4, M. Roy, James Boyce, F. N. Laguay, Jno. Smith,
226 New Orleans Night-Watchmen Company, Wm. Gleason, Emile Laine, Jno. Lyons, Wm. McFord, Geo. Goertz, John Roberts, Benj. Andrews, W. H. Wrighley, Jno. J. Walsh, Sam. Charles, Sam Davis, Jno. J. Williams, J. J. Guillotte, D. Grace, C. Voght, J. McPherson, J. Baker, T. O'Hara, David Anderson, Wm. Anderson, The Atlantic Mutual Insurance Company of New York, The British and Foreign Marine Insurance Company of Liverpool, The Standard Marine Insurance Company of Liverpool, The Factors' and Traders' Insurance Company of New Orleans, The New Orleans Insurance Association, The Insurance Company of North America, The Phœnix Insurance Company of Brooklyn, The Rhenish Westphalian Lloyds Marine Insurance Company of M. Gladbach, R. A. Stewart, and J. Stewart, and unto all other parties in interest, if any there be, and unto each of them in the sum of two thousand five hundred dollars, to be paid to the said New Harbor Protection Company and others above named herein, for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves and each of us, our
227 and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the 25th day of May, 1879.

Whereas the above-named Ocean Tow-boat Co., Good Intent Tow-boat Co., S. and J. M. Flanagan, Edward A. Yorke, Samuel S. Brown, and Jas. W. Schoenmaker, adm'rs of the est. of Will. H. Brown and Nathaniel M. Jones, have appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana from final judgments of the district court of the U. S. for said district rendered against them on the 18th day of February, 1879, and on the 19th day of April, 1879, and on the 29th day of April, 1879, and on 24th May, 1879, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation

228 is to be void; otherwise the same shall be and remain in full force and effect.

OCEAN TOW-BOAT CO.,
By W. H. McCLELLAN, *Pres.* [SEAL.]
GOOD INTENT TOW-BOAT CO.,
By W. G. COYLE, *Pres.* [SEAL.]
S. & J. M. FLANAGAN,
By E. A. YORKE, *Ag't.*
E. A. YORKE. [SEAL.]
SAML. S. BROWN &
JAS. W. SCHOENMAKER, *Adm'rs.*
Per GEO. F. ROOTES, *Ag't.* [SEAL.]
N. M. JONES,
By GEO. F. ROOTES, *Ag't.* [SEAL.]
WM. H. McLELLAN.
W. G. COYLE.

Signed, sealed, and delivered in the presence of.
Accepted.

J. McCONNELL,
Proctor for Claimants of Cargo.

Approved:

EDWARD C. BILLINGS, *Judge.*

Motion and order to pay balance proceeds to claimants of cargo, entered June 9, 1879.

NEW HARBOR PROTECTION CO.
vs. } 11207.
SHIP TORNADO & CARGO.

229 On motion of J. McConnell, proctor for The Atlantic Mutual Ins. Co. of New York, The Factors and Traders' Ins. Co. of New Orleans, and other claimants of the cargo of cotton and of the proceeds of the sale thereof herein;

And on suggesting to the court that of the parties to the final judgment herein rendered the following only have appealed suspensively, to wit:

1°. W. H. Ellis, master, and others, claiming freight, and that as to them an agreement in writing has been made which is herewith filed as part hereof, by which the said property and proceeds are released and are to be received and held by said claimants on certain conditions therein named.

2°. The Ocean Tow-boat Company, owners of the tow-boat Rio Grande.

3°. The Good Intent Tow-boat Company, owners of the tow-boat, Harry Wright.

4°. S. and J. M. Flanagan and others, owners of the tow-boat Norman.

5°. S. S. Brown and others, owners of the tug-boat N. M. Jones.

On further suggesting a reference to the interventions of the said appellants, intervenors herein, and that bonds were given in their favor
230 as intervenors libellants, with all other intervening libellants, for

property released from seizure herein, to the extent of $19,047, and that by the operation of said appeals of said four last-named appellants the said property and funds in the registry are affected to the extent of $11,000, besides the amount of said bonds, but that the remainder of the funds in the registry of the court, amounting to the sum of sixty-four thousand six hundred and eighty-one $\frac{62}{100}$ dollars is unaffected by said appeals,

It is now ordered by the court that the said balance, to wit; the sum of sixty-four thousand six hundred and eighty-one $\frac{62}{100}$ dollars ($64,681.62) so remaining in the registry of the court be paid to the said claimants of cargo herein, through their proctor of record, J. McConnell, esq.

Statement of sale of the marshal.

NEW HARBOR PROTECTION CO. vs. SHIP TORNADO. } 11207.

231 STATEMENT OF SALE.

Proceeds of 1st cotton sale		70,965 00
" " 2 " "		45,259 00
" " sale of staves		21 25
		116,245 25
Refunded for linters, &c		191 50
		$116,053 75
M'ch 12. P'd in the registry	$65,000	
" 21. " " " "	36,000	
	101,000	101,000 00
Balance in hand of M		$15,053 75

Less amount paid out by marshal, as per bills, $14,726.82. (Not complete.)

New Orleans, June 15, 1878.

E. S. WURZBURGER,
D'y M'l.

PROCEEDINGS IN U. S. CIRCUIT COURT FOR 5TH CIRCUIT AND DISTRICT OF LOUISIANA.

Motion and order subrogating W. H. McLellan in and to judgment favor Ocean Tow-boat Co.—Extract from minutes, November term, 1879.

NEW ORLEANS, *Monday, January* 12, 1880.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

232 NEW HARBOR PROTECTION CO. vs. SHIP TORNADO, CARGO, ETC. (OCEAN TOW-boat Co., et als., intervenors, appellants. } No. 8770.

On motion of Joseph P. Hornor and W. S. Benedict, proctors, it is or-

dered that W. H. McLellan be subrogated to all the right, title, and interest of the Ocean Tow-boat Company in and to the judgment in this case in favor of said tow-boat company.

Petition to have funds restored in registry.—Filed January 22d, 1880.

United States district court, district of Louisiana. In admiralty.

NEW HARBOR PROTECTION CO. *vs.* SHIP TORNADO. } No. 8870.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the Ocean Tow-boat Company, the Good Intent Tow-boat Company, S. and J. M. Flanagan, and Brown & Jones, ap-
233 pellants herein, with respect shows:

That this was a suit in admiralty originally commenced in the district court in a cause of salvage, and was strictly a proceeding in rem against the ship Tornado and cargo; that part of said cargo was bonded, but the remainder thereof, and said ship was sold by order of the district court, and the proceeds thereof, amounting to more than one hundred thousand dollars, were deposited in the registry of the said court, according to law; that final judgment having been rendered, these petitioners, feeling themselves aggrieved thereby, took an appeal to this honorable court, which was allowed and made returnable on the fourth Monday of April, 1879, and on that day this cause was docketed in this court, and an order entered granting appellants until the first Monday of November, 1879, to file said transcript; that subsequently, another judgment having been entered in this case by the district court, on 24th May, 1879, your petitioners appealed from said last-mentioned judgment on 26th May, 1879,
which appeal was allowed the same day, and made returnable
234 on first Monday of November, 1879, and the transcript of said appeals was filed in this hon. court in due time, to wit, on the 14th day of October, 1879.

Now, your petitioners show that subsequent to the granting of the said appeals to your petitioners, to wit, on the 9th June, 1879, Mr. James McConnell presented an ex parte motion to said district court, representing himself as proctor for various claimants of the cargo, and represented that of all the parties to the original action and the final judgment of the district court only these petitioners and the master and owners of the ship Tornado had appealed suspensively (there were no other appeals of any kind), and suggested "a reference to the interventions of the said appellant's intervenors herein, and that bonds were given in their favor as intervening libellants, with all other intervening libellants, for property released from seizure herein, to the extent of $19,047.00; and that by the operation of said appeals of said four last-named appellants (these petitioners) the said property and funds in the registry are affected to the extent of
$11,000.00 besides the amount of said bonds; but that the re-
235 mainder of the funds in the registry of the court, amounting to the sum of ($64,681.62) sixty-four thousand six hundred and eighty-one $\frac{62}{100}$ dollars, in unaffected by said appeals;" and thereupon the

said district court granted said Mr. James McConnell an absolute order to receive said sum from the amounts deposited in the registry of the court to the credit of this suit, notwithstanding the pendency of petitioners' appeals, and said sum of $64,681.62 was paid over by John Devonshire, esq., clerk of the district court, out of said funds, to said Mr. James McConnell, as proctor of record of the claimants of the cargo.

And on the 11th of November, 1879, said John Devonshire, esq., clerk of said district court, did deposit in the registry of this hon. court to the credit of this case the sum of $9,598.42, only as the balance in his hands belonging to this suit; whereas he should have also paid in the sum of $64,681.62, which he had paid to said Mr. James McConnell, proctor as aforesaid.

Now, petitioners show that the said proceedings were illegal, null, and void; that the district court was without power to dispose of the money in the registry of the court after an appeal had been taken, and
236 that by law the whole of the libelled property or its proceeds in the registry should have followed the appeal into this court, here to be disposed of according to law, and that this court should cause said Mr. McConnell, proctor, to repay the said $64,681.62 into the registry of the district court, and should order said John Devonshire, clerk of said district court, to at once pay into the registry of this court said sum of $64,681.62.

Now, petitioners further show that Mr. McConnell, proctor, in said motion for said ex parte order, represented that he left for the protection of appellants' claims herein a bond for libelled property restored to claimants of.....	$19,047 00
And cash in the registry, after paying him the am't of $64,681.62 illegally, as above set forth, of.....	11,000 00
Making a total of only.....	$30,047 00

Whereas the actual amounts claimed by only three of these libellants and appellants sum up a total of $40,000.00, as follows:

Claim Ocean Tow-boat Co.	(pp. 287 to 291).....	14,900 00
" S. & J. M. Flanagan	(" 293 to 299).....	13,900 00
" Good Intent Tow-boat Co.	(" 303 to 314).....	11,200 00
		$40,000 00

And leaves out of view entirely the claims of Brown & Jones, who
237 claim quantum moruit for their services, and conclusively demonstrates that there is not now sufficient funds in the control of this court to pay the demands of the appellants should this court find the same just and well founded.

Wherefore these petitioners pray that said Mr. James McConnell, proctor, be ordered to forthwith return and restore to the registry of the district court the said sum of $64,681.62, and that said John Devonshire, esq., clerk of the district court of the United States for the district of Louisiana, be ordered to send said sum up to this circuit court of the U. S. for the fifth circuit and district of Louisiana, in order that this circuit court may be enabled to execute its own decree; and petitioners pray for

costs, and for all general and equitable relief, and petitioners will ever pray.

(Signed) JOSEPH P. HORNOR,
(") W. S. BENEDICT,
Proctors for Libellants.

Hearing and submission of petition to return funds to registry and continuance of cause.—November term, 1879.

NEW ORLEANS, *Thursday, January 22d*, 1880.

Court met pursuant to adjournment.

238 Present, Hon. W. B. Woods, circuit judge.

NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO, CARGO, &C., (OCEAN TOW-BOAT CO. et al., intervenors). } No. 8770.

This cause came on to be heard on the transcript of the record from the district court of the U. S. for the district of Louisiana. Joseph P. Hornor, W. S. Benedict, and E. D. Craig, for intervenors, appellants; J. McConnell for appellees. Whereupon the proctors for the appellants presented their petition filed this day, asking for the return of certain funds which had been paid out of the registry of the district court after the allowance of the appeals herein; and counsel upon both sides were heard upon said petition, whereupon the court took the matter under advisement, and ordered the trial of the case to proceed; and thereupon counsel for the appellants moved the court for a continuance, and counsel for appellees assenting, this cause was ordered to be continued until Friday, 13th, February, 1880, at 11 o'clock a. m.

239 *Order submission of petition to restore certain funds to registry, &c. set aside.—Extract from minutes of 8th March*, 1880.

NEW HAROR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, &C., (OCEAN TOW-BOAT CO. et al., intervenors). } No. 8770.

This cause came on to be heard on the petition of the Ocean Tow-boat Company, S. & J. M. Flanagan, and Brown & Jones, to have funds restored to the registry, and was argued by the proctors for the parties.

On consideration whereof, it is ordered that the order of the submission of the said petition, entered on the 22d day of January, 1880, be and the same is hereby revoked and set aside.

Statement of W. G. Coyle offered by appellants and filed May 21, 1880.

NEW ORLEANS, *Feb'y 18*, 1880.

J. P. HORNOR, Esq.:

DEAR SIR: In reply to your question what in my opinion was

240 the value of the following-named tow-boats in February, 1878, viz,

Rio Grande, Norman, Harry Wright, and N. M. Jones. I consider that at that time the Rio Grande was worth about $20,000; the Norman $25,000; the Harry Wright $30,000, and the N. M. Jones $15,000.

I remain your humble servant,

(Signed) W. G. COYLE.

Jurat and cross-examination waived and no objection to the above statement being now offered in evidence.

Feb'y 22, '80.

J. McCONNELL, *Proctor.*

Certificate of clerk as to amount received in registry.—Offered by appellants and filed 21 *May*, 1880.

United States circuit court for the fifth judicial circuit and district of Louisiana.

CLERK'S OFFICE,
New Orleans, May 21, 1880.

NEW HARBOR PROTECTION COMPANY
vs.
SHIP TORNADO. } No. 8770.

I hereby certify that the fund in the above-entitled cause received from the district court of the United States amounts to the sum of $9,598.40.

241

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

Hearing and submission of cause.—Extract from minutes, April term, 1880.

NEW ORLEANS, *Friday, May* 21, 1880.

Court met pursuant to adjournment.

Present, Hon. Joseph P. Bradley, circuit justice.

" " W. B. Woods, circuit judge.

NEW HARBOR PROTECTION CO.
vs.
SHIP TORNADO, CARGO, &C., (OCEAN TOW-BOAT COMPANY, intervenors, appellants). } No. 8770.

This cause came on to be heard upon the transcript of the record from the district court of the U. S. for the district of Louisiana, and having been argued by the proctors of the parties, respectively, the court took time to consider.

Decree on the petition of appellants to have funds restored to registry.—Entered and filed May 24th, 1880.

242 THE NEW HARBOR PROTECTION COMpany
vs.
SHIP TORNADO, CARGO, &C. } No. 8770.

On the appeals taken by the Ocean Tow-boat Company, the Good Intent Tow-boat Company, S. and J. M. Flanagan, and Brown and Jones.

This cause came on to be heard upon the petition of the Ocean Tow-boat Company, the Good Intent Tow-boat Company, S. and J. M. Flanagan, and Brown and Jones, appellants herein, praying that James McConnell, proctor for the claimants herein, be ordered to return and restore to the registry of the district court of the United States for the district of Louisiana, the sum of $64,681.52, filed herein on the 22d day of January, 1880, and was argued by the proctors of the said appellants as well as by the proctor for the said claimants.

On consideration whereof, it is ordered that the said petition be and the same is hereby overruled at the cost of said petitioners.

May 24th, 1880.

(Signed) W. B. WOODS, *Judge.*

243 *Findings and decree.—Entered and filed May 24th, 1880.*

NEW HARBOR PROTECTION COMPANY,
vs.
SHIP TORNADO, CARGO, &C. } No. 8770.

This cause came on to be heard upon the interventions of the tow-boats Norman, Rio Grande, and Harry T. Wright, and upon the pleadings, evidence, reports, exceptions, proceedings, and decrees of the district court and the new evidence offered in this court, and was argued by counsel, on consideration whereof, the court finds the following facts:

1. The ship Tornado was an English vessel of 1,720 tons burden, and had come to the port of New Orleans for a cargo of cotton, which she had shipped and stowed away to the amount of 5,195 bales.

2. She was almost ready for sea, and was lying alongside the wharf in the third district of the city of New Orleans, at the foot of Marigny street, when, on Sunday, the 24th of February, 1878, at six o'clock a. m., smoke was found coming out of the main hatch, and a number of the crew
244 were at once sent to the nearest fire alarm box and the fire department of the city of New Orleans were quickly on the spot.

3. The main hatch having been opened the fire-engines immediately commenced to throw water down the main hatch, which they continued to do until nine o'clock a. m., when the main hatch was closed, and the steam gas-boat Protector, being provided with apparatus for the manufacture of carbonic acid gas, commenced to attempt to extinguish the fire, which at that time was raging quite violently in the hold, by attempting to fill the vessel with carbonic acid gas. This continued until nine o'clock p. m., when the main hatch was opened, and it was found that there was less

smoke than there had been before the experiment with the gas had commenced. The engineer of the Protector went down the main hatch, and having hooked on to some bales of the cotton, they were hoisted up and landed on the levee greatly charred. In the meantime the fire-engines were pumping in water through the hatch hole, and the smoke was increasing. A hole was then cut in the deck abreast the main rigging on the star-
245 board side, and some fourteen bales of cotton were got out of this hole.

4. At six o'clock p. m. smoke was greatly increasing and the hatches were again put on, and the hole in the deck covered, and the Protector again commenced pouring carbonic acid gas into the hold of the vessel, and continued doing so during the night.

5. While these things were going on the harbor tug-boats, the Continental, the N. M. Jones, the Belle Darglington, the Fern, the Aspinwall, the Charlie Wood, the Ida, the Ella Wood No. 2, the Joseph Cooper, jr., and the Wasp had all got there, hearing that the vessel was in peril, and were, with the fire department, engaged in pouring water with their more or less powerful pumps upon the fire at all times when the gas experiments were not going on. Arriving at the scene of the disaster, some earlier than others, they were all there during the whole of the first day.

6. On Monday, the 25th of February, at six o'clock in the morning, the main hatch was opened, and the hole that had been made in the deck was uncovered, and the smoke was found to be greatly increased; some thirty-two bales of cotton were at this time taken out by the steve-
246 dores. The fire department was hard at work pumping water, and several holes were cut in the decks, trying to get at the seat of the fire. The main pumps were taken up to allow the hose suction to be put down, and the Protector and the steam engines were pumping out the water part of the day, but the smoke kept on increasing.

7. At six o'clock p. m. there were twelve feet six inches of water in the hold, and the draft of water aft, twenty-three feet eight inches, and forward twenty-five feet six inches.

8. At eleven and a half p. m. the smoke was still increasing and appearing, and the crew were employed in landing the sails and new ropes, sizing stuff, and all that could be got at on the wharf.

9. On Tuesday, the 26th of February, 1878, at six o'clock a. m., Canby, the regular stevedore of the vessel, and his men came on board and landed the boats and water casks on the wharf, tore up the forward deck and carlings and commenced to save cargo. By noon the stevedore Drysdale had 181 bales landed, and Mr. Canby 100.

10. The fire department were pouring in water during the night
247 and all the forenoon, and still the smoke increased, and by noon the men were forced to come up from the hold, and the fire brigade was set to work to fill the ship with water, it having been dertermined by the captain that the only chance of saving any part of the ship or cargo, was to fill her with water and sink her, it being deemed impossible to stop the fire otherwise.

And about 7 o'clock p. m. of Tuesday, February 26, the ship sank, the water being two or three feet above the main deck.

11. On Wednesday, February 27, Ellis, the master, and Shultze, the agent of the Tornado, made a contract with the tow-boat association, to which the Norman, Rio Grande, and Harry Wright belonged, to pump

out the Tornado for a compensation of fifty dollars per hour for each boat, to be continued until the boats were discharged.

12. After the making of said contract, and while the Tornado still lay upon the bottom of the river, the Protector filed a libel for salvage against the Tornado and cargo, and by virtue of a warrant issued on said libel the U. S. marshal seized the said ship Tornado and cargo when
248 the said tow-boat' were about to begin pumping her out.

13. After the seizure the marshal took possession of the Tornado and displaced the authority of the master, but permitted the said tow-boats to proceed and pump out the Tornado.

14. That the tow-boats Norman, Harry Wright, and Rio Grande commenced pumping out the Tornado early in the evening of February 27, 1878, assisted by other tugs and the fire department of the city of New Orleans, and succeeded with said assistance, at 12 o'clock m. of Thursday, February 28, in raising the Tornado and placing her in a position of safety. The efficient work of pumping out the Tornado was done between 6 a. m. and 12 m. of February 28.

15. That the said pumping service was done without serious danger to the tow-boats by which it was rendered.

16. The total valuation of the property saved was $140,090.75.

17. The value of the tow-boats Harry Wright, Norman, and Rio Grande, in the aggregate was $75,000; and their daily expenses were each $100.00 when actually at work.

249 18. The usual charge made by tugs in the port of New Orleans is from $6 to $12 per hour for pumping.

19. That the said tow-boats remained alongside the Tornado after she was raised ready to render her assistance in case it was needed for the period of about twelve days, but such attendance was unnecessary and not required by an' peril of the Tornado and cargo, and the fire department of the city was also at hand ready to extinguished a fire in the Tornado should it again break out.

20. That the three tow-boats of the appellants, at the time of making the contract, were out of service, laid up on the other side of the river, without crews or provisions, but were immediately manned and victualled and brought over and laid alongside of the Tornado in the afternoon of Wednesday, the 27th February, 1878. At that time there were no other tow-boats alongside of the Tornado.

21. That the said tow-boats were provided with machinery and pumps for extinguishing fires and pumping out sunken ships.

22. That at the time the said services were rendered the Good Intent Tow-boat Company, a corporation organized under the laws of the State of Louisiana, was the owner of the steam-tug Harry Wright;
250 that the Ocean Tow-boat Company, a corporation organized under the laws of the State of Louisiana, was the owner of the steam-tug Rio Grande, and that Stephen Flanagan, James Flanagan, and Edward A. Yorke were the owners of the steam-tug Norman.

And as conclusions of law from the facts aforesaid, the court finds:

1st. That said contract made by Ellis, master, and Schultz, agent of the Tornado, with the tow-boat association for pumping out the Tornado, was inequitable and ought not, under the facts of the case, to be enforced.

2nd. That the services rendered by the said tow-boats Harry Wright, Norman, and Rio Grande was a salvage service, but one of low grade.

3d. That each of said tug-boats should be allowed the sum of one thousand dollars.

4th. That the costs of this appeal should be paid out of the funds in the registry of the court.

It is therefore ordered, adjudged, and decreed that the Good Intent Tow-boat Company, owner of the steam-tug Harry Wright, do
251 have and recover from the fund in the registry of the court in this cause, the sum of one thousand dollars; that the Ocean Tow-boat Company, owner of the steam-tug Rio Grande, do have and recover from the said fund the sum of one thousand dollars, and that Stephen Flanagan, James Flanagan, and Edward A. Yorke, the owners of the steam-tug Norman, do have and recover from the said fund the sum of one thousand dollars.

It is further ordered, adjudged, and decreed, that the costs of the appeal be paid out of the funds in the registry of the court.

May 24, 1880.

(Signed) W. B. WOODS, *Judge*.

Motion for appeal and order.—Entered and filed May 24, 1880.

United States circuit court, district of Louisiana. In admiralty.

THE NEW HARBOR PROTECTION CO. *vs.* THE SHIP TORNADO, CARGO, &C. } No. 8770.

On motion of Joseph P. Hornor and Wm. S. Benedict, proctors
252 for the intervening libellants, the Good Intent Tow-boat Company, W. H. McLellan subrogated to the rights of the Ocean Tow-boat Company, and Stephen and James M. Flanagan and Edward A. Yorke, respectively the owners of the tow-boats Norman, Rio Grande, and Harry Wright, and showing to the court that they are informed and believe that there is error to their prejudice in the final decrees herein, this day rendered, and that they are desirous of appealing therefrom, and counsel for the claimants being present,

It is ordered by the court that an appeal from said decrees be allowed to the above-named movers and intervening libellants, to act as a supersedeas returnable to the Supreme Court of the United States at Washington, D. C., on the second Monday of October next, upon their giving bond with good and solvent security in the sum of five hundred dollars, conditioned as the law directs.

Petition of appeal and order allowing same.—Filed June 26, 1880.

253 In the circuit court of the United States for the fifth circuit and district of Louisiana.

NEW HARBOR PROTECTION COMPANY ET AL. *vs.* SHIP TORNADO, CARGO, &C. } No. 8770. Consolidated cases.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the claimants in the above-entitled and numbered cause,

to wit, The Atlantic Mutual Insurance Company of New York, The British and Foreign Marine Insurance Company of Liverpool, The Standard Marine Insurance Company of Liverpool, The Factors and Traders' Insurance Company of New Orleans, The New Orleans Insurance Association, The Insurance Company of North America, The Phœnix Insurance Company of Brooklyn, The Rhenish Westphalian Lloyds Marine Insurance Company, respectfully shews—

That a final judgment was rendered herein on the 24th day of
254 May, 1880, and signed on the same day, in favor of the Good Intent Tow-boat Company, owners of the tug Harry Wright, the Ocean Tow-boat Company, owners of the tug Rio Grande, and Stephen Flanagan, James Flanagan, and Edward A. Yorke, owners of the tug Norman, and that the amount in dispute is largely in excess of five thousand dollars, and that said libellants have taken an appeal from said decree.

That the said claimants are aggrieved by the said judgment, and believe there is error to their prejudice herein, from which they can be relieved only by an appeal.

Wherefore they, the said claimants, pray that a cross-appeal be allowed them herein from said judgment, returnable to the Supreme Court of the United States at the next term thereof, to wit, on the second Monday of October, 1880, upon their giving bond conditioned as the law directs, with good and solvent security in the sum of dollars, and for general relief.

(Signed) J. McCONNELL,
Proctor for Claimants.

255 An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States at the next term thereof, to wit, on the second Monday of October, 1880, the appellants giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs, but said appeal shall not supersede said judgment appealed from.

June 25, 1880.

(Signed) W. B. WOODS, *Judge.*

Bond for appeal of Ocean Tow-boat Company et al.—Filed June 28th, 1880.

UNITED STATES OF AMERICA:

Know all men by these presents that we, W. H. McLellan, subrogated to the rights of the Ocean Tow-boat Company, owner of the tug-boat Rio Grande; The Good Intent Tow-boat Company of New Orleans, owner of the tow-boat Harry Wright; Stephen Flanagan, James M. Flanagan, and Edward A. Yorke, owners of the tow-boat Norman, as principals,
256 and W. G. Coyle as surety, are held and firmly bound, jointly and severally, unto The Atlantic Mutual Ins'ce Co. of New York, The British and Foreign Marine Ins'ce Company of Liverpool, The Standard Marine Ins'ce Company of Liverpool, The Factors and Traders' Ins'ce Co. of New Orleans, The New Orleans Insurance Association, The Insurance Company of North America, The Phœnix Ins'ce Co. of Brooklyn, The Rhenish Westphalian Lloyds Marine Insurance Co. of M. Gladbach,

R. A. Stewart, J. Stewart and all parties in interest, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Atlantic Mutual Ins'ce Company, and others herein above-named, and to all parties in interest herein, their heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the 25th day of June, in the year of our Lord, eighteen hundred and eighty.

Whereas, the said W. H. McLellan and above-named appellants
257 having theretofore, to wit, on the 24th day of May, 1880, taken an appeal to the Supreme Court of the United States, from and to reverse the decrees rendered on the 24th day of May, 1880, by the circuit court of the United States for the fifth circuit holding sessions in and for the district of Louisiana, in the suit of the New Harbor Protection Company vs. Ship Tornado, cargo, etc., No. 8770 of the docket thereof.

Now the condition of the above obligation is, that if the above bounden W. H. McLellan and above-named appellants shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) WM. H. McLELLAN. [L. S.]
" EDW. A. YORKE. [L. S.]
" W. G. COYLE, [L. S.]
Pres't Good Intent Tow-boat Co.
" W. G. COYLE. [L. S.]

Bond accepted.
(Signed) J. McCONNELL,
Proctor for Claimants.

Bond for appeal of claimants of cargo.—Filed July 5th, 1880.

258 UNITED STATES OF AMERICA:

Know all men by these presents that we, the Atlantic Mutual Ins. Company of New York, the British and Foreign Marine Ins. Company of Liverpool, the Standard Marine Ins. Co. of Liverpool, the Factors and Traders' Ins. Co. of New Orleans, the New Orleans Insurance Association, the Ins. Company of North America, the Phœnix Ins. Company of Brooklyn, the Rhenish Westphalian Lloy's Marine Ins. Co., as principals, and Emile P. Roux, as surety, are held and firmly bound, jointly and severally, unto W. H. McLellan, subrogated to the rights of the Ocean Tow-boat Company, owner of the tug-boat Rio Grande, the Good Intent Tow-boat Company, of New Orleans, owner of the tug-boat Harry Wright, and Stephen Flanagan, Jas. M. Flanagan, and Edward A. Yorke, owners of the tow-boat Norman, and all parties in interest, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said W. H. McLellan, subrogee, and others herein-above named, and all parties in interest herein, their heirs, executors, ad-
259 ministrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of

our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 29th day of June in the year of our Lord one thousand eight hundred and eighty.

Whereas the said Atlantic Mut'l Ins. Co., and above named appellants, having heretofore, to wit: on the 25th day of June, 1880, taken an appeal to the Supreme Court of the United States, from and to reverse the decrees rendered on the 24th day of May, 1880, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of the New Harbor Protection Company vs. Ship Tornado and cargo, No. 8770 of the docket thereof.

Now, the condition of the above obligation is, that if the above-bounden Atlantic Ins. Co., and above named-appellants shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise
260 to remain in full force and virtue.

(Signed) THE ATLANTIC MUTUAL INS. CO.
" THE BRITISH AND FOREIGN MARINE INS. CO.
" THE STANDARD MARINE INS. CO.
" THE FACTORS AND TRADERS' INS. CO.
" THE NEW ORLEANS INSURANCE ASSOCIATION.
" THE INSURANCE COMPANY OF NORTH AMERICA.
" THE PHŒNIX INSURANCE COMPANY.
" THE RHENISH WESTPHALIA LLOYDS MARINE INS. CO.

All above named appallents by their proctor'—

(Signed) J. McCONNELL. [L. S.]
" EMILE P. ROUX. [L. S.]

Bond accepted.

NEW ORLEANS, 1 *July*, 1880.
(Signed) JOSEPH P. HORNOR,
Proctor.

Instructions as to transcript of appeal.—Filed June 28, 1880.

NEW HARBOR PROTECTION COMPANY, *vs.* SHIP TORNADO, &c. } No. 8770.

The clerk will include in the transcript for the appeal herein taken to the Supreme Court of the United States the following parts of the record, only, viz:

261 The libel—district court transcript ..... pp. 1 to 16
Amended libel ..... 300 " 303
Do. do. ..... 388 " 389
Do. do. ..... 422 " 425

Intervention of M. J. Smith & Co.	60	" 65
Intervening claim of underwriters	224	" 234
Certificates attached	234	" 241
Statements of cotton attached	241	" 242
Surveyors' certificate	243	" 245
Order on intervening claim	245	
Intervening answer of underwriters	246	to 272
Intervention Ocean Tow-boat Company	287	" 291
Account annexed	291	" 292
Intervention owners tug Norman	293	" 298
Bill annexed	299	
Intervention Good Intent Tow-boat Comp'y	303	" 314
Contract annexed	314	" 315
Amended libel of owners tug Norman	350	" 351
Answer of owners of ship	411	" 421
Release bond for ship	461	
19 " " for cotton	462	" 499
Order allowing bonding, &c	524	" 526
All letters and orders from	527	" 538
Rule to bond proceeds & subsequent proceedings, from ....pp.	549	" 561
Default against ship	567	" 568
Hearing & submission	585	
Decree and order	585	" 590
Order amending decree	591	
Do. do. do.	591	" 592
Order increasing allowance to Norman	600	" 601
Report of commissioner	607	" 643
262 Exception of underwriters to report	644	to 647
" " owners tug Norman	648	" 649
Order	652	" 656
Commissioner's report	654	" 654
Order " " submitted	656	" 657
Application for appeal	660	" 661
Order appeal allowed	666	" 668
Appeal bond	668	" 675
Exceptions to commissioner's report	676	" 679
Final decree	696	" 706
Appeal	706	" 707
Appeal bond	708	" 715
Order to pay b'l'ce proceeds to claimants	715	" 718
Statement of marshal's sales	3920	"

All proceedings and documents in circuit court.
N. O., 28th June, 1880.
(Signed) JOSEPH P. HORNOR, *Proctor.*

263 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States

for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 262 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The New Harbor Protection Company vs. The Ship Tornado, cargo, etc., etc., Ocean Tow-boat Company, & others, intervening libellants, No. 8770 of the docket, so far as the same now remain of record or on file in said court, excepting such matters as are omitted in accordance with the instructions of the proctor for the appellants, on file and made part of this transcript.

Witness my hand and the seal of said court at the city of New Orleans this 4th day of October, A. D. 1880.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 4th day of October, A. D. 1880.

W. B. WOODS, *Judge.*

(Indorsement on cover:) No. 309. The Good Intent Tow-boat Company, W. H. McLellan subrogated to the rights of the Ocean Tow-boat Company, Stephen Flanagan, James M. Flanagan, and Edward A. Yorke, appellants, vs. The Atlantic Mutual Insurance Company of New York, The British & Foreign Marine Insurance Company of Liverpool, The Standard Marine Insurance Company of Liverpool, The Factors & Traders' Insurance Company of New Orleans, The New Orleans Insurance Association, The Insurance Company of North America, The Phœnix Insurance Company of Brooklyn, and the Rhenish Westphalian Lloyds Marine Insurance Company. Louisiana, C. C. U. S. Filed 7th October, 1880.

109 710

United States Supreme Court.

No. 64.

"THE TORNADO."

THE GOOD INTENT TOW-BOAT COMPANY ET ALS.,
LIBELLANTS,

v.

THE ATLANTIC MUTUAL INSURANCE COMPANY
ET ALS.

Cross-Appeal.

BRIEF FOR LIBELLANTS.

"1. The ship Tornado was an English vessel of 1,720
"tons burden, and had come to the port of New Orleans
"for a cargo of cotton, which she had shipped and stowed
"away to the amount of 5,195 bales.

"2. She was almost ready for sea, and was lying along-
"side the wharf in the third district of the city of New Or-
"leans, at the foot of Marigny street, when, on Sunday, the
"24th of February, 1878, at six o'clock A. M., smoke was
"found coming out of the main hatch, and a number of the
"crew were at once sent to the nearest fire alarm box and
"the fire department of the city of New Orleans were
"quickly on the spot.

"3. The main hatch having been opened, the fire-engines " immediately commenced to throw water down the main " hatch, which they continued to do until nine o'clock A. " M., when the main hatch was closed, and the steam gas- " boat Protector, being provided with apparatus for the " manufacture of carbonic acid gas, commenced to attempt " to extinguish the fire, which at that time was raging " quite violently in the hold, by attempting to fill the " vessel with carbonic acid gas. This continued until " nine o'clock P. M., when the main hatch was " opened, and it was found that there was less " smoke than there had been before the experiment with " the gas had commenced. The engineer of the Protector " went down the main hatch, and having hooked on to " some bales of the cotton, they were hoisted up and landed " on the levee greatly charred. In the meantime the fire- " engines were pumping in water through the hatch-hole, " and the smoke was increasing. A hole was then cut in " the deck abreast the main rigging on the starboard side, " and some fourteen bales of cotton were got out of this " hole.

"4. At six o'clock P. M. smoke was greatly increasing " and the hatches were again put on, and the hole in the " deck covered, and the Protector again commenced pouring " carbonic acid gas into the hold of the vessel, and continued " doing so during the night.

"5. While these things were going on the harbor tug-boats, " the Continental, the N. M. Jones, the Belle Darglington, " the Fern, the Aspinwall, the Charlie Wood, the Ida, the " Ella Wood No. 2, the Joseph Cooper, Jr., and the Wasp " had all got there, hearing that the vessel was in peril, and " were, with the fire department, engaged in pouring water " with their more or less powerful pumps upon the fire at " all times when the gas experiments were not going on.

" Arriving at the scene of the disaster, some earlier than " others, they were all there during the whole of the first day.

" 6. On Monday, the 25th of February, at six o'clock in " the morning, the main hatch was opened, and the hole that " had been made in the deck was uncovered, and the smoke " was found to be greatly increased; some thirty-two bales " of cotton were at this time taken out by the stevedores. " The fire department was hard at work pumping water, and " several holes were cut in the decks trying to get at the " seat of the fire. The main pumps were taken up to allow " the hose suction to be put down, and the Protector and " the steam engines were pumping out the water part of the " day, but the smoke kept on increasing.

" 7. At six o'clock P. M. there were twelve feet six inches " of water in the hold, and the draft of water aft twenty- " three feet eight inches, and forward twenty-five feet six " inches.

" 8. At eleven and a half P. M. the smoke was still in- " creasing and appearing, and the crew were employed in " landing the sails and new ropes, sizing stuff, and all that " could be got on the wharf.

" 9. On Tuesday, the 26th of February, 1878, at six " o'clock A. M., Canby, the regular stevedore of the vessel, " and his men came on board and landed the boats and " water-casks on the wharf, tore up the forward deck and " carlings and commenced to save cargo. By noon the steve- " dore Drysdale had 181 bales landed, and Mr. Canby 100.

" 10. The fire department were pouring in water during " the night and all the forenoon, and still the smoke in- " creased, and by noon the men were forced to come up " from the hold, and the fire brigade was set to work to fill " the ship with water, it having been determined by the " captain that the only chance of saving any part of the ship " or cargo was to fill her with water and sink her, it being " deemed impossible to stop the fire otherwise.

"And about 7 o'clock P. M. of Tuesday, February 26, " the ship sank, the water being two or three feet above the " main deck.

"11. On Wednesday, February 27, Ellis, the master, and " Shultze, the agent of the Tornado, made a contract with " the tow-boat association, to which the Norman, Rio " Grande, and Harry Wright belonged, to pump out the " Tornado for a compensation of fifty dollars per hour for " each boat, to be continued until the boats were discharged.

"12. After the making of said contract, and while the " Tornado still lay upon the bottom of the river, the Protec- " tor filed a libel for salvage against the Tornado and cargo, " and by virtue of a warrant issued on said libel the U. S. " marshal seized the said ship Tornado and cargo when the " said tow-boat' were about to begin pumping her out.

"13. After the seizure the marshal took possession of the " Tornado and displaced the authority of the master, but " permitted the said tow-boats to proceed and pump out the " Tornado.

"14. That the tow-boats Norman, Harry Wright, and " Rio Grande commenced pumping out the Tornado early in " the evening of February 27, 1878, assisted by other tugs " and the fire department of the city of New Orleans, and " succeeded with said assistance, at 12 o'clock M. of Thurs- " day, February 28, in raising the Tornado and placing her " in a position of safety. The efficient work of pumping " out the Tornado was done between 6 A. M. and 12 M. of " February 28.

"15. That the said pumping service was done without se- " rious danger to the tow-boats by which it was rendered.

"16. The total valuation of the property saved was " $140,090.75.

"17. The value of the tow-boats Harry Wright, Norman, " and Rio Grande in the aggregate was $75,000, and their " daily expenses were each $100.00 when actually at work.

" 18. The usual charge made by tugs in the port of New " Orleans is from $6 to $12 per hour for pumping.

" 19. That the said tow-boats remained alongside the Tor- " nado after she was raised ready to render her assistance in " case it was needed for the period of about twelve days, " but such attendance was unnecessary and not required by " an' peril of the Tornado and cargo, and the fire depart- " ment of the city was also at hand ready to extinguish a " fire in the Tornado should it again break out.

" 20. That the three tow-boats of the appellants at the time " of making the contracts were out of service, laid up on the " other side of the river, without crews or provisions, but " were immediately manned and victualled and brought over " and laid alongside of the Tornado in the afternoon of " Wednesday, the 27th February, 1878. At that time there " were no other tow-boats alongside of the Tornado.

" 21. That the said tow-boats were provided with ma- " chinery and pumps for extinguishing fires and pumping " out sunken ships.

" 22. That at the time the said services were rendered the " Good Intent Tow-boat Company, a corporation organized " under the laws of the State of Louisiana, was the owner " of the steam-tug Harry Wright; that the Ocean Tow-boat " Company, a corporation organized under the laws of the " State of Louisiana, was the owner of the steam-tug Rio " Grande, and that Stephen Flanagan, James Flanagan, and " Edward A. Yorke were the owners of the steam-tug Nor- " man.

" And as conclusions of law from the facts aforesaid the " court finds:

" 1st. That said contract made by Ellis, master, and " Schultz, agent of the Tornado, with the tow-boat associa- " tion for pumping out the Tornado, was inequitable and " ought not, under the facts of the case, to be enforced.

"2d. That the services rendered by the said tow-boats "Harry Wright, Norman, and Rio Grande was a salvage "service, but one of low grade.

"3d. That each of said tug-boats should be allowed the "sum of one thousand dollars.

"4th. That the cost of this appeal should be paid out of "the funds in the registry of the court." (Record, pp. 91 to 94.

After a final judgment had been rendered by the district court in this case, and after an appeal had been taken therefrom by these libellants, by an *ex parte* motion, without any notice to these libellants, the proctor for the claimants of the cargo obtained an order from the judge of the district court (p. 85) permitting him to withdraw from the registry of the court the sum of $64,681.62, which was paid over to him; thereupon the case being filed in the circuit court, we filed a petition asking that claimants' proctor be ordered to return said funds to the registry, the order permitting him to withdraw same having been improvidently allowed, (p. 87,) and after hearing the parties upon this petition the same was rejected and overruled. (See judgment, p. 91.)

The decree of the district court allowed these libellants but half of the amount allowed by the circuit court.

From the decree of the circuit court *both* sides have appealed.

ERRORS ASSIGNED.

1st. The court erred in its conclusion of law, that the contract made by the owners of the tug-boats for pumping out the Tornado was inequitable, and ought not, under the facts of the case, to be enforced.

2d. The court, having held as a conclusion of law that the services rendered by our tow-boats was a salvage service, erred in holding that such salvage service was of low grade.

3d. The court erred in its conclusion of law in only allowing each of our boats $1,000.

4th. The court erred in not ordering the proctor for the claimants of the cargo to restore the amount that he had been permitted by the district court to draw from the registry.

I.

The first conclusion of law that the court finds from the facts (which we have quoted in full) is as follows:

" That said contract made by Ellis, master, and Schultze, " agent, of the Tornado, with the tow-boat association for " pumping out the Tornado was inequitable, and ought not, " *under the facts of the case*, to be enforced."

What are the facts which render this contract inequitable? We look in vain for them among the findings of fact of the circuit judge. What he does find about this contract are very brief, and easily arrayed for examination.

It appears that the ship after burning for three days sank, and lay at the bottom of the river Mississippi with two or three feet of water above her main deck, (finding No. 10.) Whether she was secured there in any manner we are not informed, and we may easily imagine that the notoriously swift current of that river was not a very safe place for the deposit of upwards of $140,000 worth of property. The next day the contract in question was made, which was to the effect that our three tow-boats were to pump out the sunken vessel for a compensation of fifty dollars per hour for each boat, *to be continued until the boats were discharged*, (finding No. 11.) The three tow-boats, assisted by other tugs and the fire department, commenced pumping early in the evening of February 27, and succeeded in raising the Tornado and placing her in a position of safety at 12 o'clock M. of February 28, the efficient service being done between 6 A. M. and 12

M. of February 28, (finding No. 14.) The pumping service was done without serious danger to the tow-boats, by which it was rendered, (finding 15.) The daily expenses of our three tow-boats were each $100 when actually at work, (finding 17.) The usual charge made by tugs in the port of New Orleans is from $6 to $12 per hour for pumping, (finding 18.) The three tow-boats remained alongside the Tornado after she was raised *ready* to render her assistance in case it was needed for twelve days, but such attendance was unnecessary and not required by any peril of the Tornado and cargo, and the fire department of the city was also at hand *ready to extinguish a fire in the Tornado should it again* break *out*, (finding 20.)

These are all the facts about the contract, and we again ask, in what was it inequitable, and why should it not have been enforced? There is no finding that there was any fraud or collusion between these libellants and any one in the making of the contract, and, indeed, there is no allegation of such a character. There is no finding that the contract price was unconscionable; there is no finding that any other tow-boats could have been procured for a smaller sum, and there are no allegations to that effect. The finding that "the usual charge made by tugs in the port of New Orleans "is from $6 to $12 per hour for pumping" does not bear in any manner upon the case, for certainly these terms do not apply to pumping out large vessels, and there is no finding that such tugs were of the same character as our large tow-boats, and any one can readily recognize the distinction between a tug and a large tow-boat.

How can this court recognize a contract as equitable, after we have performed our part of the same, when such contract is not made for a lump sum, but for an hourly stipend, and for services to be rendered from hour to hour in port, and where the other party could have terminated those services at any time he pleased?

The difficulty in this case, however, is the complaint of the owners of the salved property, not that the contract price per hour was too large, but that we kept our tow-boats by the wreck too long, and thus ran up too large a bill; but was that our fault? Our contract was that our boats were to remain by the vessel until they were discharged. (Finding No. 11.) We were bound to keep them there until we were ordered or permitted to remove them. To have removed our boats before we were discharged would have been to violate the contract on our part, and to have not only forfeited all claim for compensation, but to have rendered ourselves liable for any damage that might have happened to the vessel and cargo should fire have again broken out in her cotton-laden hull, or should she have again settled back to the bed of the Mississippi river.

There is no finding that our tow-boats remained one moment after they were discharged; but there is a finding that our attendance there after she was raised was unnecessary, (finding No. 19) but that is qualified very materially by the further finding that the fire department of the city was also at hand ready to extinguish a fire in the Tornado should it again break out; so fire was dreaded, and as we have seen by the former findings of the court (Nos. 2 to 10) that the fire department utterly failed, although assisted by many *tugs*, to put out the fire before the vessel was sunk, so those in charge of the vessel might well fear that the fire department alone might again prove inefficient in case the fire broke out anew, and were justified in keeping our tow-boats alongside, "*ready to render her* assistance," (that is, with all steam up and all hands always ready for service,) until all the cotton had been discharged. *We* could only have withdrawn our boats at our peril.

But there is another and still more serious error in the finding of law that our contract was inequitable, which is

apparent upon the face of the findings of fact. We admit in all its force the power of a court of admiralty to set aside and disregard any contract that may be made for the salvage of property in peril upon navigable waters, and recognize the reason for the exercise of such power, but the court annuls such a contract only when it is "wholly inequitable, although it is a hard bargain." (The Firefly, 1 Swabey, 240; 2 Parsons' Ad., p. 628.)

The main reasons that has induced admiralty courts to set aside contracts for salvage has been that the salvors have sought in such contracts to take advantage of their position and the helplessness of the property to be salved, and of the absence at the time of all other aid and of all *competition*. But none of these reasons hold good in this case. The burned ship lay sunk at a wharf in the port of a large city. These libellants and their tow-boats were not the only ones ready and willing to aid and assist for a proper compensation. Our tow-boats were not even at the place of disaster, but "at the time of mak-"ing the contract, were out of service, laid up on the other "side of the river, without crews or provisions," (finding No. 20.) So that we were not only compelled to make the ordinary disbursements for expenses of $100 per day for each boat, but we had, upon the spur of the moment, to equip our boats for service, to man, coal, and provision them, and after our work was done, to again dismantle them and lay them up, having no use for them at that time. So that these services of ours were no casual services, tendered in the ordinary course of the business of our boats, but the contract was a deliberate hiring, for a service of great emergency deliberately entered upon and deliberately carried out in good faith on our part, and for a consideration specified and insisted on in advance as being the only adequate one for which we would agree to put our boats into service, and we were in a position where no sentiment of duty required us to undertake the

raising of the sunken vessel and cargo, and where we could not be compelled or expected to act, except upon our own terms. And by this same finding No. 20 it will be seen that when our boats were "manned and victualled and "brought over and laid alongside" of the sunken ship, "there were no other tow-boats alongside of the Tornado," hence she was abandoned as lost by all who had been trying to save her, and the help of our boats was the last hope to ever realize anything, they being "provided with machinery "and pumps for extinguishing fires and pumping out sun- "ken ship" (finding No. 21.)

"Parties may agree upon the amount of a salvage com- "pensation or on the principles upon which it shall be ad- "justed, and such agreements, if fairly made and no ad- "vantage be taken of ignorance or distress, are readily "upheld by the courts."

Harley & R.R. Iron, 1 Sawyer, 1.
The Helen & George, Swabey, p. 368.
The Fire Fly, Swabey, p. 240.
Collins & Fort Wayne, 1 Bond, p. 476.
The Henry, 2 Eng. Law and Eq., p. 564.
Hauseman and Schooner North Carolina, 15 Peters, p. 40.

"It is well settled that courts of admiralty will not allow "a salvor to take advantage of his situation, and to avail "himself of the calamities of others, to drive a bargain; "but yet they will enforce a contract, made for salvage "services and salvage compensation, where the salvor has "not taken advantage of his power to make an unreasonable "bargain."

Bark J. G. Pairet and cargo, 1 Benedict, pp. 545, 550
The Waverly, L. R., 3 Adm. and Ecc., p. 369.

II.

The second conclusion of law that the court finds from the facts is, that after having found that the services rendered by our tow-boats was a salvage service, it finds that they were of low grade.

The value of the property salved was $140,090.75; it was a ship and cargo sunk to the bottom of the Mississippi river, with the water two or three feet deep above the main deck, (finding No. 10,) and she had been deserted and abandoned by all the various tugs that for three days had been endeavoring to save her before she sunk. (Finding No. 20.)

We submit that the court erred in finding that ~~the~~ our services in raising a vessel and cargo of such value from such a position were of a low grade of salvage services.

III.

The third conclusion of law that the court finds from the facts is, "that each of (our) said tug-boats should be allowed "the sum of one thousand dollars," and in this we contend that the court erred, in that the amount allowed was not only wholly insufficient, and no compensation whatever, but was absolutely less than the amount the court has found we expended in rendering the salvage services.

The court cannot come to the consideration of this question until it shall have determined that our contract was "inequitable," and therefore to be disregarded; and the difficulty in the case is that the amount of the allowance was entirely within the discretion of the judge in the court of the first instance, and that the appellate court is, in general, unwilling to disturb such awards; but there are exceptions to the rule, and we present this case as one of them, and we are the more emboldened so to do inasmuch as the circuit court on this point so far concurred with us as to

double the allowance given us by the district judge, and which we yet very respectfully submit is wholly inadequate upon the facts found in the circuit court.

It has been held in such a case, "that where the law gives "the party an appeal, he has the right to demand the con- "scientious judgment of the appellate court on every ques- "tion arising in the cause. Hence, many cases are to be "found where the appellate court have either increased or "diminished the allowance of salvage originally made, even "where it did not violate any of the just principles which "should regulate the subject."

Post *vs.* Jones, 19 Howard, 160.

"It is exceedingly inconvenient that in a salvage suit, "where the amount to be awarded is under ordinary cir- "cumstances a mere matter of discretion, expense should "be incurred by resorting to another court; at the same "time it must be borne in mind that as long as the legisla- "ture admits of an appeal the judge before whom the case "is appealed *must exercise his own judgment upon it.* If "on the one hand the award is, upon the whole, fair as "between the parties, he will leave the case where he finds "it, especially where it is a matter of discretion; but if on "the other hand it appears to him that the award is insuffi- "cient for the services rendered, then he must act upon his "own judgment in that suit accordingly;" and in that case the salvage award was increased from £15 to £50.

The Messenger, Swabey, 191, 192.

The Harriet, Swabey, 218.

In this last case the award was increased from £15 to £40.

In the case of the Thetis, 3 Haggard, 65, upon an appeal by two of the libellants, the High Court of Admiralty of England gave the sum of £12,000 in addition to the sum or award allowed by the lower court.

In the case of the city of Berlin, 2 P. D., 187, the Court of Appeal of England, in 1877, increased the salvage award of Sir R. Phillimore, which was £2000, by allowing £4000, with the costs of the appeal.

In the case of the Rasche, L. R., 4 Adm. and Ecc., 127, decided in 1873, more than a moiety was allowed to the salvors.

In the case of the Robert Bruce, 5 Notes of Cases, 153, (5 Eng. Adm.) the High Court of Admiralty of England increased the award of £250 allowed by the lower court to £500.

In the case of the Rakes, 1 Haggard, 247, the award was increased from £115 to £200.

In the case of "The True Blue," L. R., 1 P. C., page 250, Doctor Lushington, in rendering the opinion of the Privy Council, says, on page 253, as follows: "It is perfectly true, as it has been argued on behalf of the respondents in these two cases, that this court is always very reluctant to review cases of salvage, either coming from the court of admiralty or from the vice-admiralty courts, on the sole ground of the pecuniary reward which has been bestowed in those courts being deemed to be insufficient, because it is manifest that in all these cases there is the exercise of individual discretion, and that exercise of individual discretion almost always differs among different persons. Still, however, if they think that the justice of the case has not been attained, it is the duty of this court, sitting as a court of appeal, to remedy any grievance which may appear to exist, and to do that which, under the circumstances, they may consider to be right." And accordingly, the award of the vice-admiralty court was increased from £350 to £450.

In the case of the "Scindia," (L. R. 1 P. C. 241,) in rendering the judgment at the same time as that announced in

the case of the "True Blue," above quoted, the Privy Council increased the salvage award from £2,000 to £3,000. (See p. 257.)

In the case of the "Glenduror," (L. R. 3 P. C., p. 589,) the committee of the Privy Council increased the award of the lower court, which was £1,000, to £2,000; and on the other hand the same tribunal decreased the awards of the lower courts, and reduced them in the cases of the "Amerique" (L. R. 6 P. C. 468) and "The Chetah," (L. R. 2 P. C. 205;) and they laid down the principle that the amount or difference of estimate, which would justify their reviewing the decisions of the judge of the lower court as to the amount of the award, should be to the extent of one third; unless the difference amounted at least to that, they would not interfere.

In the case at bar our three boats are allowed one thousand dollars each, making a total of three thousand dollars. The circuit court find that the daily expenses of the boats were $100 each, (finding No. 17,) and that they went to work on February 27, in the evening, raised the vessel on February 28, (finding No. 14,) and remained alongside the Tornado after she was raised, *ready to render her assistance*, for about twelve days, (finding No. 19;) that made a period of at least thirteen days, during which the expenses of each boat, at the above rate, amounted to $1,300, or a total for the three boats of $3,900, or $900 *less than the total amount awarded by the circuit court!*

Surely, no matter how inequitable the contract might have been, if the court allowed us anything at all, we should have had enough to pay our expenses, and not be mulcted in absolute loss for trying to save this ship and cargo, not only in money absolutely out of our pocket, as we have shown, but in the wear and tear of our property in this service.

We think it clear, from these considerations, that the allowance was inadequate.

IV.

We contend that the circuit court erred in not ordering the proctor for the claimants of the cargo to restore the amount that he had been permitted by the district court to withdraw from the registry, as prayed for in our petition to that effect, (p. 87.)

The facts set forth in our petition are plain upon the record, and show that after final judgment had been rendered by the district court adjudicating the claims of the various salvors (p. 78) an appeal was taken by and allowed to these appellants from said final judgment, (pp. 75, 83,) and that some time thereafter by an *ex-parte* motion, without any notice to these appellants, the proctor for the claimants of the cargo obtained an order from the judge of the district court, (p. 85,) under which said proctor withdrew from the registry of the district court a sum largely in excess of sixty thousand dollars, the same being paid over to said proctor by the clerk of said district court under said order, (p. 90,) which sum of money these appellants prayed to be ordered to be paid back and into the registry of the circuit court by said clerk and said proctor, in order that the circuit court might properly distribute the same to whomsoever it might be decreed to belong according to law.

We have but two propositions of law to maintain in this case, and they are mere statements, and in view of the long line of decisions should be sufficient, in our opinion, to warrant the granting of the relief that we prayed for.

First. That after an appeal in admiralty had been granted, the jurisdiction of the district court over the parties to the suit and over the *res* and its proceeds was entirely divested

and the circuit court immediately became invested with exclusive authority over the same.

Second. That after an appeal has been taken in an admiralty suit in the district court, that court had no longer any power to make any disposition of or to exercise any control over the funds in the registry of the court, standing to the credit of the suit in question, and therefore that any such order as is here complained of is a mere nullity.

The first authority to which we will refer your Honors is a decision of Judge Story in the case of "The Grotius," 1st Gallison, page 503. On the lower part of page 505 that learned jurist states the law very clearly, as follows:

"On the whole, I am satisfied that after an appeal the "property is removed from the legal custody of the district "court, and is no longer subject to its interlocutory orders."

This decision was affirmed by the Supreme Court of the United States in the case of "The Collector," 6th Wheaton, on page 203, where Mr. Justice Livingston rendered the decision, as follows:

"By an appeal from the sentence of the district court to "a circuit court, the latter becomes possessed of the cause "and executes its own judgment without any intervention "of the former. It is fit, therefore, that the proceeds of "the property, if it have been converted into money, should "follow the appeal into the circuit court and be deposited "in such bank or other place as it may direct, there to re-"main, subject to the disposition and direction of the cir-"cuit court, and if the property at the time of the appeal "remain in specie in the marshal's custody, and any order "or direction shall become necessary for its sale or preserva-"tion after an appeal, such order must emanate from the "circuit court.

* * * * * * *

"The proceds, therefore, of the Collector and cargo

" at the time of filing the present petition and libel, even if " the order of the district court in relation to them had been " complied with, could not after the appeal be regarded as " in or under the control of the district court, which was " therefore incompetent when this petition was filed to make " any order respecting them."

It was held by Judge Hopkinson in the case of Davis & Brooks *vs.* The Seneca, Gilpin's Report, page 40: " Being " removed from this court, it (the property) must follow the " appeal, and passes at once into the custody of the supe- " rior or circuit court, to whom any application about the " disposition of it must be made."

Again, the Supreme Court of the United States say, in the case of Montgomery *vs.* Anderson, 21st Howard, page 388:

" The appeal carries up the *res* or money in the registry " of the district court to the circuit court, and when the " rights of the parties are adjudicated there the court must " carry into execution its own decree."

And it is again laid down by the Supreme Court of the United States, in the case of " Lady Pike," 96 United States, foot of page 465: " That the rule is universal, that an ap- " peal from a district court to the circuit court carries up " the whole fund."

These doctrines so carefully laid down and so maturely considered, apply with still greater force to this case, from the fact, as shown in our petition, that while these appellants are here claiming to be paid $40,000 out of the proceeds in the registry of the court, there is but $30,047 in the registry to pay them with, notwithstanding that at the time the appeal was allowed to these appellants there was over $60,000 more in the registry, which has been illegally withdrawn, as we contend, (under the authorities cited,) by the proctor of the claimants of the cargo.

Nor are we without precedent for the course we have adopted to obtain the return of this large amount of money to the registry of this court, as will be seen from the careful examination of the various decisions that we have cited, and more particularly from the decision made by Mr. Justice Nelson in Heyforth *vs.* Griffith, 3d Blatchford, page 36 :

" Where the appeal is regular, so as to bring up the case " into this court, the funds belonging to the case must be " transferred to this court with the papers, as the court be- " low has no longer any control over them; and any dis- " charge by that court or any of its officers, of the persons " in whose custody the funds may be, is a nullity. This " court, from the time the appeal takes effect, is responsible " for the safe keeping of the funds and for their application " in behalf of the party who shall ultimately be found to " be entitled to them. The court below has no longer any " jurisdiction over the case or any of its incidents, and it " is the duty of the clerk of this court, in cases of appeal, " where there is a fund in the court below, to obtain a " transfer of the same, and to inquire into its state and " condition, and report the same to this court."

But if there were any doubt upon this subject, it is entirely dispersed by the emphatic enunciation of the Supreme Court of the United States in the very similar case of the Lottawana, 20th Wallace, page 201, where that court says, near the foot of page 225, " that if the proceeds have been " paid over, (as they were in this case,) that they should be " recalled, if practicable, and restored to the registry."

If your Honors should find that the circuit court erred in rejecting our contract for the raising of the Tornado, because it was " inequitable," and maintain our contract, then the findings of fact show that each of our three tow-boats were engaged in saving the ship Tornado and cargo for at least thirteen days, (findings Nos. 14 and 19,) which amounts to

212 hours; at fifty dollars an hour, makes the sum of ten thousand six hundred dollars due to each boat, or $31,800 in all, for which we pray we may have judgment, and that the judgment of the lower court be further reversed by ordering the returns of the proceeds of the libelled property to the registry of the court.

If, on the contrary, your honors should hold that we are only entitled to claim for a salvage service, then we submit that the amount allowed by the lower court is not one-tenth of the amount our services deserved.

All of which is respectfully submitted.

JOSEPH P. ~~HOWARD~~, Howard
WILLIAM S. BENEDICT,
of Counsel.

WASHINGTON, 20*th October*, 1883.

109-110

SUPREME COURT OF THE UNITED STATES.

THE GOOD INTENT TOW BOAT COMPANY, *et. al.*		
vs.	}	No. 64.
THE ATLANTIC MUTUAL INS. COMPANY, *et. al.*		
THE ATLANTIC MUTUAL INS. COMPANY, *et al.*		
vs.	}	No. 987.
THE GOOD INTENT TOW BOAT COMPANY, *et. al.*		

Brief of P. Phillips, James McConnell and W. Hallett Phillips, for the Insurance Companies.

The ship Tornado, laden with cotton, and lying moored to the wharf at the city of New Orleans, was, on the 24th February, 1878, discovered to be on fire.

Efforts were made by the steam fire-boat Protector, owned by the "New Harbor Protection Company," assisted by other tugs and the fire companies of the city to extinguish the fire, and to accomplish this she was, on the 27th February, filled with water and sunk.

A libel for salvage was filed by the "New Harbor Protection Company," and subsequently three separate inter-

vening libels were filed, by the "Ocean Two Boat Company," p. 23; the "Fire Boat Norman," p. 25; the "Good Intent Tow Boat Company," p. 26.

These three parties constitute the present appellants.

Each of these libels rests upon an alleged contract made by the master with each of them to pay fifty dollars per hour for pumping, and this to be continued until they were discharged.

In the answer of the Insurance Companies to the original libel they set forth the abandonment of the cargo as for a total loss, and its acceptance by them. (p. 11.)

In their answer to the intervening libels of these appellants they say:

> "They have been placed at great disadvantage in preparing their defence, and in caring for their interests as underwriters of the cargo, by the conduct of Ellis, captain of the Tornado, who neglected and refused, through the advice and co-operation of his agents, Shultz & Co., to advise and confer with these respondents or their agents, as it was his duty to do, as to the conservation of their interests as underwriters upon said cargo. That they repeatedly cautioned said captain, verbally and in writing, against making contracts, especially with reference to the handling, storage, &c., of the cargo when rescued; which proffered advice and co-operation, extended in the interest of all concerned, was rejected or disregarded upon unfounded pretexts; and improvident and illegal contracts made, or attempted to be made, by him, without their knowledge or consent, and greatly damaging to the interest of the owners of the cargo, and to your respondents, as underwriters thereon, and afterwards substituted owners.
>
> "That in consequence of said conduct of said captain, and other acts of record showing strong bias against your respondents, and other acts of like bad faith showing an utter disregard of his obligations to protect their interests, they are not bound or affected by any of his acts or attempted contracts in the premises." (p. 21.)

The testimony taken was very voluminous, and on the hearing, the District Judge held these contracts to be unconscionable and awarded as for salvage to each of these parties the sum of one thousand dollars instead of the sums claimed under the contracts, to wit.: $14,900, $13,900, and $11,200.

An appeal was taken to the Circuit Court and there the amount allowed by the District Court was again decreed, and the case is now brought here on the joint appeal of these three parties to reverse that decree.

The finding by the Circuit Court shows what was done by the Protector—other tugs and the fire engines in extinguishing the fire; in doing this it was found necessary to fill the ship with water and sink her. This was accomplished about 7 p. m., on the 26 February, when she "sank, the water being 2 or 3 feet above the main deck."

On the following day the master entered into the contracts above referred to, and the court finds, "that these parties commenced pumping on the evening of the 27th, and, assisted by other tugs and the fire department of the city, succeeded in raising the ship and placing her in a position of safety on the 28th.

That the efficient work of pumping was done between 6 A. M. and 12 M. of the 28th.

That this was done without serious danger to the two boats by which it was rendered.

That their aggregate value was $75,000, and their daily expenses, while actually at work, were each $100.

That the usual charge made by tugs, in the port of New Orleans, is from six to twelve dollars per hour for pumping.

That the total value of the property saved was $140,000.

These are the substantial facts of the finding, and it will

be seen that if the parties had been paid for pumping at the highest rate, say $12 per hour, they would have been each entitled to $72, instead of $1,000, as allowed by the decree.

The finding thus terminates, "and as conclusions of law from the facts aforesaid," the court finds—

1st. That the said contract made by Ellis, master, and Schultz, agent of the Tornado, was inequitable and ought not, under the facts of the case, to be enforced.

2d. That the services rendered by said tow boats was a salvage service, but one of low grade.

As to the first conclusion, we submit that whether the contracts were inequitable and ought not to be enforced, was a question cognizable by the admiralty court.

As said by Dr. Lushington, when the case turns upon the effect of an agreement made by the master, the court will carry it into effect, unless contrary to justice and equity. The owners of the ship, against whom the agreement is attempted to be enforced, may show that it was improperly obtained, or that, under the circumstances, the sum stipulated for was grossly exorbitant.

The Helen and George, 1 Swabey, 368.

And so is stated by Curtis: "The particular contract should be pleaded, to the end that the court might see whether the circumstances under which it was made, its consideration, and the services actually performed, compared with those stipulated for, were such as would induce the court to decree its execution."

Hennessey v. *Ship Versailles*, 1 Curt., 358.

When the court is called on to enforce such an agreement it looks to the evidence to inquire whether it is of such a character as justifies it.

Whether it is inequitable or reasonable, is solvable only by the facts attending the transaction.

The finding that the contracts were inequitable and ought not to be enforced is not reviewable.

By the act 16 February, 1875, the finding of facts by the Circuit Court in admiralty cases is conclusive.

The review of decrees on such findings is limited to a determination of the questions of law arising upon the record, and to such rulings of the court as may be presented by bill of exceptions.

The Abbotsford, 98 U. S., 440;
The Conemara (not reported).

There is here no bill of exceptions, nor is the first conclusion a question of law arising upon the record.

The circuit judge calls it a conclusion of law; but it is no more a question of law in the sense of the act of 1875, than if the matter had been submitted to a jury, as provided by the act, and they had rendered a verdict that the contract was inequitable.

Facts found by a jury are conclusive, and facts found by the judge are, by the act, equally conclusive.

These principles are so well established that it is not easy to understand upon what theory the present appeal can be made to rest.

The cross-appeal is taken on the ground that the facts found do not warrant the conclusion that this is a case of salvage.

We have already stated the condition of the ship when the appellants entered into agreement to pump at so much per hour.

The parties themselves did not seem to regard the work as salvage service.

The court holds it to be salvage service of a *low order*, but we submit there is no element of salvage in the case,